

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-2191-2017 (O&M)****Reserved on: 04.02.2025****Pronounced on: 14.02.2025****RAMESH AND ANOTHER****. . . .APPELLANTS****Vs.****SMT. LAXMI AND OTHERS****. . . . RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present:- Mr. Sushil Jain, Advocate, for the appellants.

Mr. Sanjeev Sharma, Legal Aid Counsel for the respondents.

DEEPAK GUPTA, J.

Suit for partition filed by plaintiffs-Smt. Laxmi and Bimla (*respondents No.1 &2 herein*) was decreed by the trial Court on 20.01.2015. The appeal filed by two out of the three defendants was dismissed by the First Appellate Court on 16.01.2017. This has led to the filing of the present Regular Second Appeal by defendants No.1 & 3 against the concurrent findings of the Courts below.

2. Although arguments in this appeal were heard along with RSA N: 6062-2018 titled 'Satish vs. Kanwar Bhan etc.', but it is noticed by this court that suit property involved in present RSA 2191-2017 and RSA 6062-2018 are different. Even the issue involved in the two appeals is different. Not only this, appellant of RSA 6062-2018 namely Satish is neither a party to the present appeal N: RSA 2191-2017 nor he has any concern with the subject matter of property involved in this appeal. As such, RSA 6062-2018 is being disposed of separately.

3. Trial Court record was called. The same has been perused. In order to avoid any confusion, parties shall be referred as per their status before the trial Court.

4. Smt. Bhagwani Devi wife of Sh. Kanwar Bhan, was owner of house measuring 300 sq. yard, which is the subject matter of the present suit. She had purchased the plot underneath the said house by virtue of a registered sale deed No.3439 dated 27.10.1976 from one Prem Parkash. Construction of the house was raised on the said plot after 8-10 years of the purchase. Bhagwani Devi expired on 29.06.1998. She left behind five children i.e. two sons namely, Ramesh & Ashok and three daughters namely Laxmi, Bimla and Anju Bala.

5.1 Two of the daughters namely Laxmi and Bimla brought the suit seeking decree for partition of the suit property to the extent of their 1/5 share each against their three siblings i.e. Ramesh, Ashok and Anju Bala.

5.2 Defendant No.2 Anju Bala did not contest the suit and was proceeded *ex parte*.

5.3 However, two brothers-Ramesh and Ashok contested the suit and in their written statement, they denied the suit property to be joint between the parties. According to them, suit property had come to their share by virtue of a family settlement arrived in the month of May 1987. It was further pleaded that mutation sanctioned qua the suit property after the death of Bhagwani in favour of all the 5 legal heirs of Bhagwani was without any intimation to them and so, it was null and void. They further took the plea that the property in dispute was purchased by defendant-Ramesh by incurring all the expenses, in the name of their mother Bhagwani Devi as per the custom prevalent at that time. They prayed for dismissal of the suit.

5.4 These defendants No.1 & 3 also filed a counter claim assailing the mutation No.5306, sanctioned in the name of five children of Bhagwani Devi. Plaintiffs contested the said counter claim.

6.1 Necessary issues were framed. Evidence produced by the parties was taken on record.

6.2 Trial Court found that Bhagwani Devi was owner of the suit property having purchased it in 1976 and that after her death in 1998, all her 5 children i.e., parties to the suit had inherited the same in equal share i.e. 1/5th share each. It was further held that defendants had failed to prove any family settlement of 1987 as was pleaded by them. It was also held that defendants had failed to prove any custom, under which the suit property had been purchased by them in the name of their mother. Consequently, it was held that after the death of Smt. Bhagwani Devi, all her five children were entitled to inherit the same to the extent of 1/5 share each. Suit was accordingly decreed for partition on 20.1.2015, holding that plaintiffs are entitled to 1/5th share each in the suit property. Preliminary decree was directed to be prepared accordingly.

6.3 Defendants No.1 & 3 Ramesh and Ashok unsuccessfully filed the appeal against the aforesaid judgment, as the same was dismissed by the First Appellate Court on 16.01.2017. Against the aforesaid concurrent findings, the present appeal has been filed.

7. Perusal of the paper book would reveal that vide order dated 15.10.2019, this Court asked the parties to place on record the valuation of the suit property to try and effect the compromise between the parties. Vide another order dated 18.12.2019, matter was referred to the Mediation and Conciliation Centre of this Court so as to try and effect the compromise between the parties. It was directed that prevalent market value and collector rate of the property in dispute were available on record.

8. Consequent to above, parties to the suit except Anju Bala appeared before the Mediation Centre and compromise was effected between them. Settlement deed dated 16.01.2020 (Annexure A1) was executed amongst them. The said settlement deed was sent to this Court by the Mediator. As per this settlement, appellant-defendant Ramesh

agreed to pay ₹30 lakh each towards 1/5th share each to the two plaintiffs-respondents i.e. Laxmi and Bimla by specified time.

9. After receipt of the report from the Mediation centre, the matter was adjourned from time to time. Now, the prayer made by Id. counsel for the appellants-contesting defendants is that the appeal be disposed of in terms of the settlement deed dated 16.01.2020 executed between the parties before the Mediation centre. They also offered to pay cheque of ₹10 lakh each in favour of Bimla and Laxmi in the Court itself and stated that they will pay the remaining amount of ₹20 lakh each to both of them within next two months. However, the above said prayer is opposed by the respondents. Both the respondents, who have been present in the Court, prayed to reject the settlement deed and stated that they wanted share in the suit property to the extent of their share.

10. It may be noted that appellants-defendants are not contesting the appeal on merits and have only prayed for deciding the appeal on the basis of settlement deed effected between the parties before the Mediation centre. On the other hand, the contesting respondents-plaintiffs, though did not deny the execution of settlement deed before the mediation center, but they are not ready to abide by the same and prayed that they want share in the property.

11. During arguments, it has been fairly conceded by Id. counsel appearing for the contesting respondents-plaintiffs that suit property i.e. house in question is impartible. It has also not been disputed that it is the appellants i.e., brothers of plaintiffs - respondents, who are residing therein. The question is that in such circumstances, how the suit property i.e. a house measuring 300 sq. yard is to be partitioned so as to give 1/5th share each to the two plaintiffs-contesting respondents.

12. In the above facts and circumstances, when the suit property is not partible so as to give 1/5th share each to the plaintiffs, which they will never be able to enjoy, it will be in the best interest of justice that

they are equally compensated in terms of money. A similar view had been taken by this High Court in ***Mahavir Saini Vs. Jaishi Ram, 2016 (3) PLR 736.***

13. In January 2020, when the settlement deed was executed between the parties before the Mediation centre, the appellant-Ramesh had agreed to pay ₹30 lakh each to the two plaintiffs towards their 1/5th share each in the suit property. Meaning thereby that the value of the suit property was agreed by the parties at that time to be ₹1,50,00,000/- (One Crore Fifty Lacs).

14. Now, period of five years has elapsed since that settlement deed. The Court can take judicial notice of the fact that during this intervening period of five years, the prices of the suit property must have increased a lot. Therefore, in order to balance the equities and for fair distribution, it is directed as under:

a) Let the valuation of the suit property be taken at ₹2 crores and as such, the appellants–defendants have to pay ₹40 lakh each to the contesting respondents-plaintiffs.

b) It is directed that out of this ₹40 lakh each, the appellants shall pay ₹20 lakh each to both the plaintiffs on or before 15.03.2025. The remaining amount of ₹20 lakh each shall be paid to them on or before 15.05.2025.

c) In case, the contesting respondents-plaintiffs refuse to accept the amount as per this order, the appellants will be at liberty to approach the Executing Court so as to deposit the amount therein and in that eventuality, the Executing Court shall serve the notice to the contesting respondents for making payment to them.

d) In case, the appellants–contesting defendants fail to make payment of ₹40 lakh each to the respondents-plaintiffs as per this order up to 15.05.2025, in that eventuality, the plaintiffs-contesting

respondents will be at liberty to approach the Executing Court for selling the suit property at market value and then pay 1/5th share each of the sale proceeds to all the parties i.e., children of Bhagwani.

The present appeal is disposed of accordingly.

14.02.2025

Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>