



RSA No.5078 of 2003 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

128.

RSA No.5078 of 2003 (O&M)

Reserved on:20.05.2024

Pronounced on:30.05.2024

Gian Singh

... Appellant

Versus

Randhir Singh and others

... Respondents

2. RSA No.5080 of 2003 (O&M)

Gian Singh

... Appellant

Versus

Sheela Devi and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashish Aggarwal, Senior Advocate with
Ms. Aashna Aggarwal, Advocate
for the appellant.

Mr. P.S. Rana, Advocate
for respondents in RSA No.5078 of 2003 and
for respondent No.1 in RSA No.5080 of 2003.

HARPREET SINGH BRAR, J.

1. This order of mine shall dispose of two regular second appeals bearing No.5078 of 2003 and 5080 of 2003. The former arises out of Civil Suit No.53 of 1998 (hereinafter called the 1st suit) titled as *Gian Singh Vs. Randhir Singh and others* and the latter from Civil Suit No.338 of 1994 (hereinafter called the 2nd suit) titled as *Smt. Sheela Devi Vs. Gian Singh and others*.

2. In both cases, Gian Singh, plaintiff in the 1st suit and defendant No.1 in the 2nd suit is the appellant before this Court challenging the concurrent finding rendered by both the Courts below whereby the 1st suit has been dismissed and

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the 2nd suit has been decreed in favour of plaintiff-Sheela Devi. However, for the sake of brevity, facts are being taken from the 1st suit.

3. The appellant-plaintiff in the 1st suit namely Gian Singh had filed a suit for permanent injunction against the defendants on the ground that he and defendants No.1 and 3 (hereinafter referred to as respondents-defendants) are related to each other. About thirty years ago, grandfather of defendant No.1 in the 1st suit namely Jug Lal son of Data Ram and grandfather of appellant-plaintiff namely Rati Ram son of Asa Ram, being common ancestors of Devi Singh, had entered into a family settlement account to which the suit property, which is a plot marked A.B.C.D. measuring 80'x30' situated in Village Dabkauli Kalan came to the share of grandfather of the appellant-plaintiff, which was being used for tethering cattle. Thereafter, the appellant-plaintiff had constructed a *pucca* room and six feet boundary wall over the said plot. As per site plan, in North of the said plot situated 80' house of Balwan Singh, in South 80' house of Haneef, in East *gali share aam* and in West 30' house of Balwan Singh. It was further pleaded by the appellant-plaintiff that in the year 1962, the grandfather of defendant No.1 and father-in-law of defendant No.3 had left village Dabkauli Kalan and settled at Karnal. Defendants have no right in the suit property and they want to sell the same to defendant No.2 illegally. They tried to dispossess the appellant-plaintiff forcibly but could not succeed due to timely intervention of the respectable persons of the village. Since they were adamant to dispossess the appellant-plaintiff illegally and forcibly, the 1st suit was filed seeking permanent injunction against the defendants.

4. Per contra, defendants had resisted the suit of the appellant-plaintiff by filing their written statement and raised objections qua *locus standi* of the appellant-plaintiff to file the suit and mis-joinder and non-joinder of necessary

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parties. On merits, it was averred that no family settlement was ever arrived between the grandfather of defendant No.1 and the grandfather of the plaintiff. Defendant No.3 after the death of her husband had become the absolute owner of the suit property and the suit property was never in possession of the appellant-plaintiff or his forefathers.

5. After completion of pleadings, 11 issues were framed by the learned trial Court including the issue of relief. The appellant-plaintiff examined as many as 15 witnesses and the defendants examined five witnesses in support of their case. After appreciation of oral as well as documentary evidence, the learned trial Court dismissed the 1st suit and decreed the 2nd suit vide judgment dated 08.05.2002. Appeal preferred against the aforesaid judgment passed by the learned trial Court stood dismissed vide judgment dated 16.10.2003 passed by the Additional District Judge, Karnal. Aggrieved by the concurrent judgments of the Courts below, the appellant-plaintiff has approached this Court by way of instant appeals.

6. Learned Senior Counsel appearing for the appellant-plaintiff argued that an oral family settlement was arrived at between the grandfather of the appellant-plaintiff and grandfather of defendant No.1 in the 1st suit and as per the said family settlement, the suit property fell to the share of grandfather of appellant-plaintiff. The defendants No.1 and 3 have admitted said factum in the compromise Ex.PW8/A effected between the parties wherein it was recited that appellant-plaintiff is owner in possession of the suit property. In order to prove the compromise Ex.PW8/A, the appellant-plaintiff examined the scribe of the said compromise namely Mehar Singh, who corroborated the contents of the same. It was further argued that the local commissioner appointed by the learned trial Court in the 1st suit was examined as PW1, who stated that he



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inspected the suit property and found a cot was spread in the room and some ladies namely Saroj wife of Sri Chand, Dharambiri wife of Gian Singh (appellant-plaintiff), Kamla wife of Krishan and some children were playing there. A *chulha* and utensils were found in the room, which signified that cooking used to be done in that room. Furthermore, the forefathers of – respondents-defendants had left the village 30 years ago and started living at Karnal. In support of his contention, he relied upon Ex.PW5/A and Ex.PW6/A i.e. the voter list of the year 1992 qua respondent No.2/defendant No.3 and the death of Bhagat Ram, husband of respondent No.2/defendant No.3 respectively showing their address at Karnal. It was also argued that the local commissioner appointed in the 2nd suit was not examined and therefore, the report submitted by him has no authenticity. Furthermore, PW-14 Gian Singh, appellant-plaintiff had proved the execution of compromise Ex.PW8/A by respondent-defendants but there was no cross-examination on behalf of the respondents-defendants in this regard. Reliance was placed on the judgment passed by the Hon'ble Supreme Court in *Rajinder Pershad (dead) by LRs Vs. Darshana Devi (2001) 7 SCC 69* to contend that in order to dispute correctness of statement of a witness, opportunity must be given to him in cross-examination to explain his statement by drawing his attention to that part of it, which is objected to as untrue. Once the respondents/defendants have admitted the family settlement onus to prove the fact that their signatures were taken on blank papers which were converted into the compromise Ex.PW8/A shifted on respondents/defendants, which they failed to discharge and therefore, judgments rendered by the Courts below in decreeing the suit in favour of respondent No.2/defendant No.3 are liable to be set aside. In support of his



contention, he relied upon the judgment passed by this Court in ***Durlabh Singh Vs. Nahar Singh and another 1991 (2) PLR 92.***

7. Per contra, learned counsel appearing for the respondents submitted that the suit property was inherited by respondent No.2/defendant No.3 from her husband namely Bhagat Ram. Thereafter she also raised *pucca* construction on the said plot. The appellant-plaintiff Gian Singh tried to dispossess her from the suit property and in this regard, a criminal case was registered against him and his associates. Balwan Singh, who appeared as DW4, proved the family settlement Ex.DW4/A and it is clearly established that the panchayat found respondent No.1 as owner in possession of the suit property. Further reliance has been placed upon copy of the field book Ex.DW1/A and site plan Ex.DW1/B.

8. I have heard learned counsel for the parties and perused the record of the case with their able assistance. The entire case of the appellant-plaintiff in the 1st suit hinges upon the compromise Ex.PW8/A, which has been allegedly effected between the parties on 25.02.1994. A perusal of the said document reveals that it is not a compromise, rather it is an application written to Incharge of police post at Biana in a criminal dispute that arose between the appellant-plaintiff and respondents Randhir and Sheela Devi wherein it was recorded that a panchayat was convened wherein it was decided that the disputed plot is situated in the *abadi deh* of the village and it belongs to Gian Singh, who is already in possession of the same. It was also recorded that forefathers of both parties had exchanged the properties with each other in a family settlement and in lieu of disputed plot, land situated behind the ancestral house of Rati Ram was given to forefather of respondent No.1 Randhir Singh.



9. The whole edifice of the case of the appellant-plaintiff is that an oral family settlement was arrived between the forefathers of the appellant-plaintiff and respondents-defendants whereby in lieu of disputed plot, some other land was given to forefathers of respondents-defendants and the disputed plot fell in share of forefather of appellant-plaintiff and till then, he is owner in possession of the same and therefore, permanent injunction was sought against the respondents-defendants to not to interfere in his peaceful possession. However, the appellant-plaintiff has failed to prove that any oral family settlement took place between the forefathers of appellant-plaintiff and respondents-defendants. The star argument of learned senior counsel appearing for the appellant-plaintiff was that respondents-defendants in the compromise Ex.PW8/A have admitted the factum of said oral family settlement. Even if for the sake of argument though not admitted, it is presumed that an oral settlement was arrived at between forefathers of the appellant-plaintiff and respondents-defendants wherein it was decided that in lieu of suit property, land situated behind ancestral house of forefather of appellant-plaintiff will be given to forefather of respondents-defendants, the appellant-plaintiff has miserably failed to prove that the said oral settlement was actually given effect to and the properties were exchanged between the parties in terms of the oral settlement and in part performance of the said oral family settlement, forefather of respondent-defendants was given possession of the land situated behind the ancestral house of Rati Ram. In the absence of an iota of evidence produced by the appellant-plaintiff that there was an oral family settlement and terms of the said family settlement were given effect to as has been recorded in Ex.PW8/A, as the onus to prove the same was on him, it can be safely inferred that there was no such oral family settlement or if there was any, that was not given

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effect to and thus, automatically nullified. Once the oral family settlement as pleaded by the appellant-plaintiff is not proved, a compromise reduced into writing Ex.PW8/A by the panchayat stating that disputed property belongs to appellant-plaintiff and he is already in possession of the same as well as a reference to the oral family settlement arrived at between forefathers of the parties have no value in the eyes of law. Furthermore, once the appellant-plaintiff failed to discharge the onus qua issue No.1 framed by the learned trial Court i.e. *‘whether Gian Singh son of Babu Ram is absolute owner in possession of the dispute property*, the argument raised by the learned senior counsel appearing for the appellant-plaintiff that in the absence of specific pleading taken by the respondents-defendants that a fraud was played upon them as their signatures were taken on blank papers, compromise Ex.PW8/A ought not to have been discarded by both the Courts below, has no merit, as the said issue would come for consideration subsequently, had the appellant-plaintiff successfully discharged his burden qua issue No.1 as stated above. Furthermore, the said argument has already been dealt with by the Courts below by placing reliance upon the official record i.e. field book of village Dabkauli Kalan as Ex.DW1/A and site plan Ex.DW1/B and in both the documents husband of respondent No.1 namely Bhagat Ram is recorded in possession of the property at Sr. No.366. The description and boundary of the property also tally with the house mentioned in the field book. Further reliance was placed upon the legal notice dated 12.04.1988 Ex.DW4/B, a postal receipt Ex.DW4/C and acknowledgement Ex.DW4/D and it was observed that in an earlier dispute with Balwan Singh and his brother, husband of respondent No.1 Bhagat Ram had sent a legal notice through his counsel Sh. Harish Kumar Gupta and in the said legal notice, the description of the property exactly

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matched with the description of the suit property. Both the Courts below have rightly discarded the compromise Ex.PW8/A as it did not inspire confidence because the same was recorded in the police station. Moreover, mere recital of a compromise in an application addressed to the Incharge of the police post would not *ipso facto* prove a family settlement. Furthermore, both the Courts below have rightly rendered a finding that transfer of title through an unregistered document cannot be considered valid in the eyes of law.

10. In order to prove his possession over the suit property, the appellant-plaintiff relied upon the report of the local commissioner Ex.PW11/A, site plan and memo of presence attached thereto as Ex.PW1/B and Ex.PW1/C respectively. Local Commissioner was appointed by the learned trial Court vide order dated 21.03.1994 in the 1st suit and a perusal of the said order reveals that the learned trial Court had directed Sh. S.K. Sehgal, Advocate, who was appointed as local commissioner to visit the spot and to prepare a report in question after notice to both the parties. The local commissioner in his report stated that he reached the spot at about 5.15 PM on 21.03.1994 and called the village chowkidar and directed him to call defendants at the spot. However, after some time he reported that none of the defendants was available in the village. Sh. S.K. Sehgal, local commissioner stood in the witness box as PW-1 and in his cross-examination, he stated that the appellant-plaintiff took him at the spot and he called for the defendants only at the spot and no prior notice was given. Despite a specific direction given by the learned trial Court to visit the spot and to prepare a report in question after notice to the parties, no such notice was given to respondents-defendants for the reasons best known to the local commissioner. Thus, an *ex parte* report was prepared by the local commissioner in violation of provisions of Order 26



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Rule 18 CPC and principles of natural justice. Furthermore, it is settled law that commissioners' reports are non-adjudicatory in nature and the Courts adjudicate upon the rights of the parties. It is only an opinion or noting, as the case may be with the details or statement to the court with respect to actual state of affairs. Such a report does not automatically form part of the court's opinion, as the Court has the power to confirm, vary or set aside the report or in a given case issue a new commission (see judgment passed by the Hon'ble Supreme Court in *M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit, Pachma, District Sehore and others Vs. M/s Modi Transport Service* passed in Civil Appeal No.1973 of 2022 decided on 11.05.2022). Except the report of the local commissioner, the appellant-plaintiff has failed to produce any evidence to show his possession over the suit property and therefore, the Courts below have rightly drawn an adverse inference against the appellant-plaintiff. Furthermore, in the 2nd suit as well, a local commissioner was appointed by order of the learned trial Court, who gave his report in favour of the plaintiff therein namely Sheela Devi.

11. The argument raised by the learned senior counsel appearing for the appellant-plaintiff that about 30 years ago, forefather of respondent No.1 had left the village Dabkauli Kalan and shifted at Karnal and reliance in this regard on document Ex.PW5/A copy of voter list of respondent No.2 and Ex.PW6/A death certificate of Bhagat Ram husband of respondent No.2 showing his place of death as Karnal, has no merit. DW-5 Sheela Devi in his testimony stated that his husband died in a hospital at Karnal and therefore, his place of death is mentioned as Karnal. Rather Voter card of respondent No.1 dated 20.12.1995 Ex.DW5, receipts of *chulha* tax, passbook of *Sehkari Rin avem Sewa Samiti*

Ltd. showing address of respondent No.1 at village Dabkauli Kalan proved that she was a resident of village Dabkauli Kalan.

12. As an upshot of above, I do not find any illegality and perversity in the current finding rendered by the Courts below, much less, no substantial question of law arises for consideration of this Court. Consequently, the concurrent finding rendered by both the Courts below dismissing the 1st suit and decreeing the 2nd suit in favour of the plaintiff-Sheela Devi therein are upheld and both the regular second appeals are dismissed.

(HARPREET SINGH BRAR)
JUDGE

May 30, 2024
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No