

RSA No. 2128 of 2012 and 3957 of 2013(O&M)

ARCHANA ARORA
2015.02.14 14:22
I attest to the accuracy and
authenticity of this document

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2128 of 2012(O&M)
Date of decision :February 10, 2015

Jagdish

..... Appellant

Versus

Santosh and others

..... Respondent

RSA No. 3957 of 2013(O&M)

Jagdish

..... Appellant

Versus

Azad Singh and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Shailendra Jain, Senior Advocate with
Mr. Gaurav Aggarwal, Advocate
for the appellant.

Mr. Ravinder Singh, Advocate
for respondent Nos. 1,2 and 4.

Mr. Arun Kumar Singal, Advocate
for respondent No.3.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

CM No.5932-C of 2012 in RSA No. 2128 of 2012

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 80 days in refiling the appeal is condoned.

The application stands disposed of.

CM No. 5933-C of 2012 in RSA No.2128 of 2012 & 10695-C of 2013 in RSA No.3957 of 2013

These are applications under Section 151 CPC seeking exemption.

The applications are allowed.

Exemption granted.

CM No. 10697-C of 2013 in RSA No. 3957 of 2013

This is an application under Section 5 of Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 587 days in filing the appeal is condoned.

The application stands disposed of.

RSA No. 2128 of 2012 and 3957 of 2013

This order of mine shall dispose of two appeals.

In both the appeals the appellant-plaintiff has challenged the judgment and decree of the lower appellate court. For adjudication the facts are taken from the pleadings of RSA No. 2128 of 2012.

The appellant-plaintiff filed a simpliciter suit for declaration that he is exclusive owner in possession of the suit property situated in Rohtak Road near Kalupur Octroi, Sonipat bearing khasra No.326/27 Bhagat Singh Colony, Sonipat comprising of residential house and a saw mill named Patanjali Saw Mill. The suit was filed against none else but the brothers i.e Azad Singh and legal representatives of Jai Pal Singh since deceased. The case set up by the appellant-plaintiff was that the property was a joint Hindu family property comprising of the plaintiff and three brothers as well as father Puran and it was purchased by four sale deed dated 20.1.1982 and 30.6.1989 and two in the name of the plaintiff-Jagdish, Jai Pal Singh and Azad Singh. The appellant-plaintiff set up an oral settlement of the year 1990 and according to the oral family settlement the property described in the plaint had fallen to his share.

However, the said suit was contested by the defendants and while rebutting the averments made in corresponding paragraph of the plaint came out with stand that there was no oral family settlement, much less severance of their share and the property had jointly been held by all the co-owners. During the trial, the appellant-plaintiff came out with writing Ex. PW-8/A dated 14.11.1999 to allege that a written compromise was entered into between the brothers and the same was witnessed by various witnesses and in support of the aforementioned document examined PW-8 Lambardar-Bhim Singh.

The trial court on the basis of oral and documentary evidence decreed the suit of the appellant-plaintiff by holding as

under:-

“Perusal of entire evidence on case file shows that plaintiff is in exclusive possession of suit property which indicates that in fact a settlement was reached between the parties as claimed. This is because the ration card of all the parties is separate. DW2 claimed that the saw mill was installed by her father-in-law. However, as per the records, said saw mill is in the name of the proprietor Jagdish Singh. Defendants do not have any title in the saw mill. Electricity connection is also in his name. Said connection was installed in the year 1987. Defendants have failed to produce any document or record which could show that they were also interested in the running of saw mill in suit property or that they were in possession of the residential portion of the same. They did not refute that they were not in exclusive possession of separate houses as per the claim of plaintiff. Moreover, they failed to prove that plaintiff was in joint ownership and possession of remaining properties which was alleged by them to be joint. The factum that for the past so many year, parties are residing separately itself, is sufficient to prove that a family partition has taken place between them. Defendants have not even claimed that they are sharing the profits of saw mill which is being run by plaintiffs or that they are in possession of any of the portion of the suit property. Separate exclusive possession of the family members on different properties shows that such arrangement has been made in furtherance of oral settlement. Hence, the plaintiff is held the exclusive owner in possession of suit property. Issue No.1 is decided in favour of the

plaintiff.”

The said judgment and decree of the trial court was assailed by the defendant by filing two appeals. Both the appeals have been allowed by judgment and decree dated 14.10.2011. The lower appellate court after examining the contents of the sale deed as well as various other documents, much less after appreciating the oral evidence set aside the judgment and decree of the trial court.

Learned counsel appearing on behalf of the appellant-plaintiff in support of grounds of appeal submits that the lower appellate court while reversing the well reasoned judgment of the trial court has committed illegality and perversity and has misread the oral and documentary evidence, much less not referred to the case law cited in support of his contention.

Mr. A. K. Singal, learned counsel appearing on behalf of respondent-Azad Singh in support of his contentions submits that the lower appellate court has rendered a finding of fact and law and there is no substantial question of law involved in the present appeal to be adjudicated by this court. He has further referred that the trial court rather committed illegality and error in not referring to the contents of the sale deed and decreed the suit without referring to the same.

I have heard learned counsel for the parties, appraised the impugned judgment and decree of the lower appellate court as well record of the trial court and am of the view that the appeals are liable to be dismissed for the following reasons.

The appellant-plaintiff failed to discharge the onus

of oral family settlement alleged to have taken place in the year 1990. The suit in the instant case had been filed on 15.2.2008. From the year 1990 till 2008 no documentary evidence/revenue/Municipal record has come on record to prove that the oral family settlement was reflected in those documents. The property as reflected in the sale deed was held by all the co-owners, was thus owned by the co-sharers i.e. plaintiff and defendant Nos. 1 and 2. There is no reflection of any partition in the revenue/Municipal record. A simpliciter suit of declaration in view of the law laid down in **Gian Kaur Vs. Raghbir Singh 2011 AIR SC (Civil) 855** was also not maintainable.

The trial court has committed illegality and perversity in granting declaration of exclusive ownership in favour of the appellant-plaintiff without adverting to the contents of the sale deed. Since the revenue/Municipal record reflected the joint ownership of all the co-owners, the remedy, if any, for the appellant-plaintiff was to claim partition of the joint property.

The lower appellate court has rightly discarded Ex.PW-8/A the alleged compromise dated 14.11.1999 as the said document was not pleaded in the plaint. The appellant-plaintiff did not claim any injunction, though had been able to prove his exclusive possession in the residential house and a saw mill but in the absence of any injunction no occasion arose for the lower appellate court to ponder upon the relief of injunction.

The lower appellate court has rendered a finding of fact and law after appreciation of oral and documentary evidence,

much less law. The lower appellate court has discharged the obligation as enshrined under Section 96 of the Code of Civil Procedure being the last court of fact and law. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 10 , 2015
archana