

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.899 of 2013(O&M)
Date of decision: 23.02.2015

Manjit Kaur and others

...Appellants

Versus

Rani alias Jaspal Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Deepak Aggarwal, Advocate for the appellants.

Mr. Rakesh Gupta, Advocate for the respondents.

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

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was decreed by the trial court vide judgment and decree dated 17.05.2011. Appeal preferred against the said decree failed and was dismissed on 06.11.2012. This is how, defendants are before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, plaintiffs prayed for a declaration that they were co-owners in joint possession of house No.875R, Multania Road, Bathinda, to the extent of 2/3rd share and the rest 1/3rd share was owned by the defendants. And plaintiffs were entitled to get the ownership qua their 2/3rd share

incorporated in their names in the Municipal records. By way of consequential relief, a decree for injunction was claimed, restraining the defendants from causing any interference in their possession and also from alienating the same. It was averred that originally Kartar Singh son of Jiwan Singh, happened to be the owner in possession of the house in question. Since, he died on 01.02.2002, and was survived by the plaintiffs and the heirs of his pre-deceased son i.e. defendants. Post death of Kartar Singh, his estate was inherited by the plaintiffs to the extent of 2/3rd share and the rest 1/3rd share in the suit property was owned by the defendants. Therefore, plaintiffs were entitled to have their names incorporated in the Municipal records qua 2/3rd share in the said house. Despite repeated requests to the Municipal Committee, no tangible result emerged, thus, the suit.

In defence, it was pleaded, inter alia, that a compromise was effected between the parties in case ROR No.148 of 2004, titled as Manjit Kaur v. Rani and others, dated 11.09.2004, vide which the plaintiffs were to receive a sum of ₹ 1,00,000/- per acre qua their share in the agricultural land and ₹ 2,00,000/- for their share in the house i.e. the suit property. A sum of ₹ 4,00,000/- was advanced to the plaintiffs in the presence of the witnesses and thus, plaintiffs were left with no right, title or interest in the house in question. It was maintained that the plaintiffs were married

since long and were not in possession of the house or any portion thereof. Vide compromise dated 11.09.2004, plaintiffs had in fact relinquished their share, if any, in favour of Amrinder Kaur minor and Manjit Kaur widow of Jaswant Singh, and had already received an amount in lieu thereof. Therefore, defendants were the absolute owners of the house in question and thus, the suit was liable to be dismissed.

On a consideration of the matter in issue and evidence on record, the courts below found that concededly the house in question was owned by Kartar Singh i.e. the father of the plaintiffs and Jaswant Singh i.e. predecessor-in-interest of the defendants. Kartar Singh had died on 01.02.2002 and this is how plaintiffs and Jaswant Singh had inherited the disputed house to the extent of 1/3rd share each. As regards the execution of the compromise/agreement dated 11.09.2004 (Ex.D1), it was observed that the said document was indeed executed between the parties. It was scribed by Surinder Kumar, Advocate (DW1) and was attested by Balvir Singh (DW3), Labh Singh and Jagmail Singh. However, an analysis of the document (Ex.D1), revealed that the plaintiffs had agreed to relinquish their share in the suit property i.e. the house for a sum of ₹ 2,00,000/- and also in the agricultural land @ ₹ 1,00,000/- per acre. A sum of ₹ 4,00,000/- was received by the plaintiffs by way of earnest money and they had agreed to complete the contract upto

11.11.2004, on receipt of balance sale consideration i.e. ₹ 4/5 lacs. In fact, the document (Ex.D1) pertained to the agricultural land as well as the disputed house. The alleged agreement/compromise was executed on 11.09.2004 i.e. during the pendency of the suit, and was only an agreement to sell, vide which plaintiffs had agreed to relinquish their share in the disputed house as well as the land that was inherited by them. The balance sale consideration i.e. ₹ 4/5 lacs were to be received upto 11.11.2004 and a writing was to be executed in this regard. Accordingly, it was concluded that agreement to sell does not confer any title on the proposed vendor. Therefore, it could not be presumed that pursuant to document (Ex.D1), plaintiffs had relinquished their share in the suit property. However, the observation of the trial court that the date to seek a decree for specific performance of the contract had since expired, was beyond the scope of the present suit and hence the same was set aside. As regards the question of limitation, the same was left open to be examined in a suit, if any, filed by the defendants qua the agreement dated 11.09.2004. Accordingly, it was concluded that the plaintiffs had succeeded to prove that they had 2/3rd share in the house i.e. the suit property, that was devolved upon them post death of their father Kartar Singh. Therefore, they were co-sharer in joint possession and defendants could only sell their share in house. Accordingly, the suit was decreed.

Appeal preferred against the said decree by the defendants failed and was accordingly dismissed.

I have heard learned counsel for the parties at length and perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

Per contra, learned counsel for the respondents (plaintiffs) submits that both the courts below on a due consideration of the document (Ex.D1) had concluded that the same was merely an agreement to sell and thus, does not transfer any title in the suit property in favour of the defendants.

On a due and thoughtful consideration of the matter in issue, I am of the considered opinion that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Concededly, the suit property was originally owned by Kartar Singh i.e. the father of the plaintiffs and the predecessor-in-interest of the defendants, namely, Jaswant Singh. There is also no dispute that Jaswant Singh, predeceased his father and was survived by the defendants herein. Meaning thereby, the suit property devolved upon the plaintiffs to the extent of 2/3rd share and the defendants were owners of the rest 1/3rd

share. Execution of the agreement/compromise dated 11.09.2004 (Ex.D1), was not only proved but even conceded by the plaintiffs. Thus, the short issue to be determined was/is as to what is the true nature of the document, dated 11.09.2004 (Ex.D1). Whether the suit property was transferred in favour of the defendants vide Ex.D1. A bare reading of the agreement/compromise dated 11.09.2004 (Ex.D1,) suggests that it is clear, concise and incapable of any misconstruction. Recitals in the said document reveals that it was not only the 2/3rd share in the house i.e. the suit property, that was agreed to be sold by the plaintiffs to the defendants, but also their 2/3rd share in the agricultural land i.e. 6/7 acres. As is made out from the document (Ex.D1), the disputed house was agreed to be sold for a sum of ₹ 2,00,000/- and the agricultural land was agreed to be sold @ ₹ 1,00,000/- per acre. A sum of ₹ 4,00,000/- was concededly received by the plaintiffs by way of earnest money qua not only the house but also the agricultural land. That is how, the balance sale consideration i.e. ₹ 4/5 lacks was agreed to be paid upto 11.11.2004. The argument that is being advanced by learned counsel for the appellants, that as the house was agreed to be sold only for a consideration of ₹ 2,00,000/- and a sum of ₹ 4,00,000/- were paid, at the time of execution of the document, the total sale consideration qua the house at least stood paid, is wholly misconceived and is based on complete

misconstruction of the document (Ex.D1). As observed above, the agreement in question was not qua the house alone but was also for the agricultural land. And a sum of ₹ 4,00,000/- that were advanced by way of earnest money, was towards both i.e. house as well as the share in the agricultural land. As the balance sale consideration of ₹ 4/5 lacs was to be paid by 11.11.2004, proves that sale deed was to be executed only thereafter. Had there been a sale of a house, there would have been a clear recital, rather a sale deed qua the disputed house at the initial stage itself. Learned counsel for the appellants could not point out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

February 23, 2015
Rajan

(Arun Palli)
Judge