

IN THE PUNJAB AND HARYANA HIGH COURT  
AT CHANDIGARH

RSA No.2559 of 2014  
DECIDED ON: OCTOBER 20, 2015

SURENDER SINGH

...APPELLANT

VERSUS

NARESH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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?

Present: Mr. N.C. Kinra, Advocate  
for the appellant.

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**JASPAL SINGH J.**

Instant appeal has been preferred by Surender Singh against the judgment and decree dated April 30, 2013 whereby, the suit for declaration with consequential relief of permanent/mandatory injunction was dismissed. The appeal preferred against the afore-said judgment and decree was also dismissed by lower Appellate Court vide judgment and decree dated December 06, 2013.

2. Brief facts giving rise to the instant *lis* are that Narender Singh, common ancestor of the defendants had inherited some agricultural as well as residential properties situated at VPO Bohar, Tehsil and District Rohtak from her aunt Panmeshwari @ Parmeshwari Devi by dint of Will dated 02.08.1991.

Later on, the properties inherited by him had become disputed and on account

of this reason, Narender Singh had to file numerous civil suits to protect those properties and for this purpose, Sh. Narender Singh had required huge money to pursue the litigation and on account of this reason, he had approached the plaintiff to get financial help from him. Thereafter, an agreement was executed between the plaintiff and Narender Singh on dated 02.12.2005 vide which aforesaid Narender Singh had agreed that in case he had succeeded in getting the property by dint of the Will in question dated 02.08.1991, then he will divide the said property in two equal parts and shall hand over half share of the said property to the plaintiff. After finalization of the said agreement, the plaintiff had agreed to provide financial help to Narender Singh to meet out the expenses. Ultimately, Sh. Narender Singh had expired on 26.11.2009 during pendency of the said litigation and after his demise, the plaintiff had succeeded in getting the property by dint of judgment and decree passed in Civil Suit no. 395-1 of 2006/2009. Appeal was also dismissed but thereafter, the defendants had failed to give half share of the suit properties to the plaintiff. Hence, he was constrained to institute the present suit.

3. Upon notice defendants appeared and resisted the suit and also filed their joint written statement. The defendants have assailed the suit primarily on the ground that the present suit is not maintainable as according to the plaintiff's version, agreement had taken place on 02.12.2005 whereas the civil suit was instituted on 08.07.2010. Hence, the suit is barred by limitation. Besides it, it has been averred by the defendants that Narender Singh had made the payment of the entire amount which was taken by him from the plaintiff and nothing had remained due towards them and as such, question of dividing the suit property does not arise. It has been further averred by the defendants

that the plaintiff had incurred the amount of ₹5,50,000/- on the litigation and the said amount was returned to him by way of cheques and as such the plaintiff is not entitled to get the suit property partitioned. Replication was not filed.

4. From the pleadings of the parties, following issues were framed by the ld. trial court on 20.04.2011 to settle the matter in controversy:-

1. Whether plaintiff is entitled for decree of declaration to the effect that the agreement dated 02.12.2005 executed by the ancestor of defendants in favour of plaintiff is legal, binding and enforceable by the parties to the suit? OPP
2. If issue no. 1 is proved in affirmative, whether plaintiff is entitled for decree of mandatory injunction directing defendants to comply the terms of agreement dated 02.12.2005 and plaintiff is entitled for partition to the extent of half share and consequently for the possession thereof? OPP
3. Whether plaintiff is entitled for decree of permanent injunction restraining the defendants as mentioned in the plaint? OPP
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Whether the suit of plaintiff is hopelessly time barred? OPD
6. Whether the plaintiff has not affixed advolum court fee on the plaint? OPD
7. Relief.

5. In order to settle the matter in controversy, both the parties were afforded ample opportunities to adduce and conclude evidence in respect of their respective pleadings and they led oral as well as documentary evidence.

6. After hearing learned counsel for the parties and bestowing due consideration to the rival submissions and scrutinizing the evidence, ld. trial court dismissed the suit of the plaintiff vide judgment and decree dated April

30, 2013.

7. Disheartened from the said judgment and decree, plaintiff preferred the appeal before the lower appellate court but it also met with the same fate and was dismissed vide impugned judgment and decree dated December 06, 2013.

8. Disheartened with dismissal of appeal by first appellate court, appellant has preferred the instant appeal.

9. While assailing the findings recorded by 1d trial court on issues No. 1 to 3 passed by both the courts below, it has been argued with vehemence by learned counsel for the appellant that mis-appreciation of evidence has resulted into miscarriage of justice. In fact, it is a specific case of the appellant-plaintiff that Narinder Singh shall be obliged to transfer ½ share of the property received by him on the basis of Will executed by his aunt Smt. Parmeshwari Devi but subject to the condition that plaintiff was to incur 50% of the litigation expenses. It is amply proved on record that plaintiff-appellant paid a sum of ₹5,50,000/- to the respondents to meet out the expenses of litigation pertaining to the suit property. This fact has been admitted by DW-1 Naresh Kumari one of the defendants while appearing in the witness-box but both the courts below have failed to appreciate the aforesaid aspect.

10. Learned counsel for the appellant has further contended that the findings recorded by the courts below that the agreement Ex.P-1 is not enforceable being based upon uncertain events of future is also against the law and fact. Even the payment of an amount of ₹5,50,000/- stands established from the statement of Naresh Kumari, who appeared in the witness box as DW-

1. As far as Ex.P-1 is concerned, appellant-plaintiff has examined as many as 5

witnesses. Ld. lower court has also wrongly interpreted the provisions contained in Sections 31 and 32 of the Indian Contract Act. In fact, the agreement cannot be termed to be a void one. Thus, the findings recorded by the ld. lower court being against the evidence as well as the factual matrix are liable to be set aside by way of acceptance of instant appeal. The suit of the plaintiff merits decreetal in toto that too with special cost.

11. After bestowing due consideration to the submissions made by learned counsel for the appellant as well as scrutinizing the impugned judgments and decrees passed by both the courts below, this Court is not in agreement with various submissions made by learned counsel for the appellant.

12. No doubt, the execution of agreement Ex.P-1 dated December 02, 2005 is proved on record but it can be safely concluded that as per the terms and conditions thereof, it is evident that it is not enforceable agreement being based upon uncertain events of future. There is also no cogent and convincing evidence brought on record by the appellant/plaintiff that the amount of ₹5,50,000/- has been incurred by the appellant/plaintiff towards the litigation expenses. There is no documentary evidence in this regard. Moreover, there is also nothing on the record to suggest that on December 02, 2005 Narender Singh was having any right, title or interest in the disputed property. Admittedly, he was not the owner of the property subject matter of Ex.P-1. The agreement can be said to be entirely based upon conjectures and surmises. He is claiming to be the owner of the property in suit on the basis of Will alleged to have been executed by Smt.Parmeshwari Devi but no such Will has seen the light of the day. Even there is nothing on the record to prove that Smt. Parmeshawri Devi was the owner of the property in question or she has

transferred the property in question in favour of Narender Singh. Even the death certificate of Smt.Parmeshwari Devi has not been placed and proved on record. So, this Court is of the considered view that the ld. trial court has rightly concluded that the agreement Ex. P-1 is not enforceable and the findings in this regard have been rightly affirmed by ld. lower appellate court.

13. The agreement Ex.P-1 can be said to be a contingent as defined in Section 31 of the Indian Contract Act, 1872 and such a contract can only be enforced when the happening of that event becomes impossible, and not before.

14. As has been discussed above, there is nothing on the record to suggest that the agreement Ex.P-1 is enforceable. Rather, it can be said that it is impossible to perform the contract especially in the circumstances that neither there is any Will alleged to have been executed by Smt. Parmeshwari Devi nor that Smt. Parmeshwari Devi, at any point of time was the owner of the property in dispute. Thus, the findings recorded by the ld. trial court are absolutely in consonance with the evidence available on file. There is no illegality or infirmity in the impugned judgments and decrees. This Court is of the considered view that the appeal is nothing but an abuse of the process of law.

15. In the light of what has been discussed above, this court does not find any merit in the instant appeal. As such, the same stands dismissed whereby the impugned judgments and decrees passed by both the courts below are affirmed. No order as to costs.

**OCTOBER 20, 2015**  
***sonika***

**(JASPAL SINGH)**  
**JUDGE**