

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

Regular Second Appeal No.4525 of 2014 (O&M)

Date of decision: 10.4.2015

Inderjit Singh

... Appellant

Versus

Vandana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Krishan Singh, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

CM No.3889-C-2015

For the reasons mentioned in the application, the same is allowed and order dated 20th March, 2015 is recalled and the main case is taken up today itself.

RSA No.4525 of 2014

The plaintiff is in second appeal against concurrent findings of facts recorded by the Courts at Jagadhri, Haryana. The disputed property is a house bearing a municipal number situate in Mohalla Tejli Gate, Jagadhri. The case stated by the plaintiff is that the suit property originally belonged to his father Gurbachan Singh who had purchased the plot on which a residential building stands constructed. The father is no more. The 2nd defendant is his younger brother who is stated to not having been an earning

member of the family at the time the construction of the house was carried out.

2. The dispute is that the 1st Defendant is the wife of the 2nd defendant. It is alleged that latter married 1st defendant in the year 1988 and together they set up their matrimonial home in Shahdara, Delhi and two children were born to them in Delhi. The plaintiff claims title to property on the basis of a family settlement executed during the life time of Gurbachan Singh whereby the 2nd defendant opted to take moveable property consisting of gold and valuable articles instead of a share in the corpus since he wanted to settle down permanently in Delhi. On receiving valuable articles, 1st defendant is said to have relinquished his rights in the corpus in favour of the plaintiff and the 3rd and 4th defendants who are proforma defendants and are, therefore, proforma respondents in this second appeal.

3. The 1st and 2nd defendants raised a dispute with respect to the corpus and are alleged to have taken forcible possession of a portion of the property which led the plaintiff to file a suit for declaration before the Additional Civil Judge (Senior Division), Yamunanagar at Jagadhri claiming title with the consequential relief of possession. In these circumstances, there is no dispute that the 1st and 2nd defendants are in possession of a portion of the suit property and the only question on which the parties went to trial was with respect to title claimed exclusively by the plaintiff and denied by the contesting defendants. There can also not be a dispute that the parties inherited by survivorship and Hindu succession from Gurbachan Singh on his death.

4. The plaintiff alleges that the marriage between the 1st and 2nd

defendants is asunder and they are in litigation including on a complaint made by 1st defendant against her husband under Sections 406, 498A IPC. The 1st Defendant has laid stake on the corpus claiming that the 2nd defendant in collusion with his brother the 2nd defendant have tried to do her out of the property while the 2nd defendant is legally bound to provide residence to his wife and children and, therefore, the suit is claimed to be collusive in nature engineered by the 2nd defendant through his brother by inviting litigation upon himself to avoid his financial liability towards his wife and children. Quite obviously, the 1st and 2nd defendants are at loggerheads over the corpus property. The 1st Defendant claimed she was in possession of a portion of the corpus throughout her matrimonial life and that she used to frequently visit Jagadhri and would stay in the suit house along with her children. The respondent wife denies that the money spent on the construction of the residential house was not shared by her husband, 2nd defendant, and the corpus is family property, the brothers being co-sharers. She has, therefore, every right to raise construction over the property in her possession. She has stoutly resisted the prayer for exclusive and peaceful possession of the plaintiff and grant of injunction.

5. In counter to the suit, the 1st defendant claims that a meeting of the Biradari took place on 3rd April, 2003 in which parties were *ad idem* that 1/4th share of the house in dispute was to be given to the 1st defendant whereby she was made absolute owner in possession of her share in the suit property. It was also decided in the meeting that in case she is given the price of 1/4th share of the house in dispute, she would vacate the house after receiving the payment from the plaintiff and the co-defendants. Two persons

were appointed mediators by consent that caused valuation of the property which was assessed at ₹ 8 lacs. However, the plaintiff and the co-defendants reneged from the compromise effected between the parties by the members of the Biradari.

6. Parties went to trial on as many as 9 issues of which issue No.2 was with respect to ownership vesting in the plaintiff on whom the onus was placed.

7. Parties led their respective oral and documentary evidence before the learned trial Court who has vide judgment and decree dated 29th October, 2010 dismissed the suit finding no evidence to support the existence of an oral family settlement through which the plaintiff claimed exclusive ownership over the suit corpus. The learned trial Court held that the plaintiff failed to prove the oral family settlement alleged to have been struck in 1988 during the life time of the father of the plaintiff and 2nd defendant. The plaintiff pleaded that by virtue of the family settlement of 1988, he along with his brother Mohinder Singh the 3rd defendant and sister Neelam 4th defendant have become co-owners in joint possession of the corpus but when he stepped into the witness box as his own witness as PW1, he deposed that as per the family settlement, the entire house had fallen to his share. The learned trial Court reasoned that without doubt the house was self-acquired property of Gurbachan Singh and he died intestate. Learned trial Court has faulted the theory propounded by the plaintiff also on the ground that if he had constructed the house from his own resources, then the provisions of Benami Transactions (Prohibition) Act, 1988 would

come into play. Leaving that aside, learned trial Court on facts found that the family settlement was not an acceptable assertion when there was no proof of acceptance of construction for surrendering right to property by the 2nd defendant in favour of the plaintiff, then the plaintiff could not demonstrate his case based on evidence of his exclusive title to the exclusion of the joint rights, title and interest the 2nd defendant and therefore the 1st defendant. Moreover, the plaintiff's witness Gulshan Kumar PW2 brought into stand as a witness to the alleged family settlement has been found not to be a reliable witness because he could not throw light on the terms of the alleged family settlement. The Court discovered that Gulshan Kumar was the brother-in-law of the plaintiff from his wife's side. The plea of family settlement has not been accepted for the many reasons and findings recorded by the trial Judge.

8. On his turn the learned first appellate court has endorsed the view of the learned trial Court and dismissed the first appeal on 25th July, 2013 against which the plaintiff is in second appeal.

9. Learned first appellate Court has also disbelieved the alleged oral family settlement and found that the relationship of the 1st and 2nd defendant is indeed estranged. The only oral evidence in support of the alleged family settlement is the testimony of his brother and the brother-in-law which is not sufficient to constitute a valid proof of family settlement, to which, I would add that there were no pleadings in the plaint to support that disputes had arisen between the parties during the life time of the father when the settlement was made in the year 1988 which needed to be resolved to maintain family peace and avoid future litigation. It is difficult to imagine

what disputes within the family arose which Late Gurbachan Singh had tried to resolve when the corpus was his self-acquired property which he could have easily disposed of by a will or by any other mode but he did not do so. The story behind the 2nd defendant's relinquishing his right to the corpus by accepting moveable property in lieu thereof has not been proved on evidence. Learned appellate court questioned as to where was the occasion for surrendering gold ornaments and cash after the death of the father while the alleged settlement was made *inter vivos* which causes a severe dent to the genuineness of the oral family settlement when ordinarily the law recognizes that the process of relinquishment and acquisition of property rights takes place simultaneously on the date of a family settlement or an arrangement between the parties dividing and distributing the property among members of the family with a view to settle the disputes and avoid litigation in future and such rights are normally not postponed to keep the family feud simmering. This is perfectly good reasoning of the learned appellate court in the judgment and appellate decree dated 25th July, 2013.

10. Also, the learned appellate court did not fail to notice a contradiction between the depositions of PW1 and Ashok Kumar the 2nd defendant appearing as DW1 of the valuable consideration for relinquishing rights in the suit corpus. PW1 deposed that the 2nd defendant was given ₹ 20,000/- while the 2nd defendant stated in his evidence that he was given ₹ 20,000/- in addition to gold and movable property in exchange of rights. The 2nd defendant had filed a separate written statement admitting the plaintiff's claim. This was seen as the motive for defeating the rights of 1st defendant when she started asserting her rights to claim a share in the

corpus through her husband protecting herself and her children from right deprivation. The presence of Gulshan Kumar PW2 at the time when the alleged family settlement was arrived at, has been disbelieved by the lower appeal court after appreciating the testimony when in his cross-examination, he blundered that the cash amount and the ornaments representing the 2nd defendant's share were made over in the life time of their father Gurbachan Singh. The discrepancies in the evidence have outweighed the probabilities against the plaintiff and in favour of the 1st defendant leading to dismissal of the appeal.

11. In the presence of these facts, no life is found in this appeal which is ordered to be dismissed since the validity of the oral family settlement has not been proved as a matter of fact when it was the fact-in-issue on which the superstructure of the case of the plaintiff depended. What has not been proved by evidence as a fact, and which fact asserted is the core issue entitling relief cannot give rise to a question of law, much less a substantial question of law for this Court to entertain the appeal in the limited jurisdiction available under Section 100 of the Code of Civil Procedure, 1908 which is not designed for correction of errors of fact or of law unless they give rise to a substantial question of law.

12. Accordingly, the appeal is dismissed in limine for lack of merit.

(RAJIV NARAIN RAINA)
JUDGE

April 10, 2015
Paritosh Kumar