

Regular Second Appeal No.5163 of 2014 (O & M)

Date of Decision: October 13, 2015

Sudhir Kumar Sondhi

.....APPELLANT(S)

VERSUS

Dalip Kumar Sondhi & another

.....RESPONDENT(S)

. . .

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. Vikas Bahl, Senior Advocate, with
Mr. Parminder Singh, Advocate, for the appellant.

Mr. Sumeet Mahajan, Senior Advocate, with
Mr. Amit Kohar, Advocate, for respondent No.2.

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JASPAL SINGH, J

Civil Miscellaneous No.12164-C of 2014

Heard.

Application is allowed as per the averments made in
the application duly supported by affidavit of the petitioner. Delay of 837
days in refiling the appeal is condoned.

Regular Second Appeal No.5163 of 2014 (O & M)

Challenge in this regular second appeal is to judgment & decree dated February 17, 2012 passed by the lower appellate court whereby judgment & decree dated February 8, 2011 passed by the Civil Judge (Junior Division), Jalandhar has been upheld, vide which the suit for possession by way of partition of 3/4th share in House No.458, New Jawahar Nagar, Jalandhar, as shown in red colour in the site plan, was disposed of on the basis of compromise arrived at between the parties, Ex.P3, dated June 11, 2001.

The facts recapitulated from the pleadings are that the property in dispute was owned by Smt. Kamal Sondhi wife of Ram Parkash Sondhi (plaintiff No.1) and mother of plaintiff Nos.2 & 3 and defendant, who breathed her last on May 24, 1990. Since then, plaintiffs and defendant are owners and in joint possession of the property in question. However, the physical possession thereof is that of plaintiff No.1 and defendant as plaintiff No.2 has been living abroad whereas plaintiff No.3 is residing at Chandigarh. The plaintiffs and defendant are having 1/4th share each in the disputed property. As the plaintiffs are unable to enjoy the fruits of the property, as such, they do not want to keep their property joint. Consequently, they preferred the suit for possession which was decided on the basis of compromise Ex.P3.

Dis-satisfied with the judgment & decree dated February 8, 2011 passed by the Civil Judge (Junior Division), Jalandhar, appellant – defendant, Sudhir Kumar Sondhi, preferred an appeal before the lower appellate court but that appeal was also dismissed vide

judgment & decree dated February 17, 2012 which has been challenged by the appellant through the instant appeal.

Challenging the impugned judgment(s) and decree(s), it has been argued with vehemence by learned counsel for the appellant that both the courts below have failed to appreciate the settled canons of law that once the compromise, on which, whole of the case depends, comes into a controversy, then, a special vigilant view should have been taken by the courts below. Both the courts below have ignored all the evidence led by the parties prior to the alleged compromise. It was the duty of the court to consider the evidence on record but an easy way was adopted by the courts below to decide the matter on the basis of compromise. Infact, during the pendency of the civil suit before the lower court, Dalip Kumar Sondhi had moved an application objecting compromise which is itself conclusive of the fact that no compromise ever took place and if at all this Court comes to the conclusion that compromise took place between the parties, in that event, it was the result of family pressure and on account of ill health of Ram Parkash Sondhi, who was a cancer patient. Thus, the impugned judgment(s) and decree(s) are not sustainable in the eyes of law. The same are liable to be set aside and the matter is required to be dealt with and disposed of on merit by the courts below after its remand.

This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellant.

Before dealing with the appeal on merits, it would be desirable that application (CM No.12811-C of 2015) moved under Order

41 Rule 27 CPC read with Section 151 CPC is dealt with and disposed of. Vide this Application, applicant – appellant has sought the production of sale deed dated August 16, 2001 (Annexure AX-1) and certified copy of Will dated June 11, 2001 (Annexure AX-2), as additional evidence.

Since the matter in controversy between the parties has been set at rest vide the impugned judgement and decree passed by the civil court on the basis of compromise Ex.P3 and affirmed by the lower appellate court vide judgment and decree dated February 17, 2012, the production of these documents is not necessary for adjudication of the instant appeal. This application appears to have been filed just to delay in disposal of appeal and implementation of decree(s) in question. Hence, the same is dismissed.

Now, coming to the main appeal, it would be significant to mention that the suit was filed by Ram Parkash Sondhi and others on October 14, 1999. The proceedings of the said case remained pending almost for 11 years and during pendency of the suit, the matter was compromised between the parties. Compromise Deed dated June 11, 2001 (Ex.P3) alongwith site plan has been admitted by the parties. Their statements to that effect have been recorded by the lower court. On June 13, 2001, all the parties had also made their statements that they have no objection if the suit is decreed as per compromise. No doubt, an application was moved by Dalip Kumar Sondhi (non-appellant) to discard compromise Ex.P3 but that application was not pursued by him. Moreover, Dalip Kumar Sondhi is not an appellant before this Court and if any application was moved by him, the same is not going to affect the

compromise or cause any prejudice to the rights of the appellant. In view of statements suffered by the appellant before the lower court, he is estopped to challenge the judgment(s) and decree(s) in question. The instant appeal is nothing but an abuse of the process of law. There is no question of law, much less substantial question of law involved in this appeal. The decrees are absolutely in consonance with the compromise arrived at between the parties.

The contention raised by learned counsel for the appellant that the evidence recorded by learned lower court has not been taken into consideration while deciding the suit, is of no value in view of the compromise effected between the parties and that evidence was not required to be taken into consideration at all.

In the given circumstances, impugned judgment(s) and decree(s) do not call for any interference by this Court and are absolutely in consonance with the settled law. Appeal is absolutely meritless and the same is dismissed leaving the parties to bear their own costs.

October 13, 2015
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(Jaspal Singh)
Judge