

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.5883 of 2014 (O&M)

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Date of decision:23.3.2015

Pritam Singh (since deceased) through LRs Maninder Kaur and others
.....Appellants

v.

Rajbal Singh (since deceased) through LRs Satinder Kaur and others
.....Respondents

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Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rakesh Gupta, Advocate for the appellants.

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Inderjit Singh, J.

Pritam Singh (since deceased) through LRs Smt. Maninder Kaur (widow), Gagan Preet Kaur (daughter) and Jagpreet Singh (son) of late Shri Pritam Singh have filed this regular second appeal against Rajbal Singh (since deceased) through LRs Satinder Kaur (widow) (since deceased) through LRs Ashish Bal Singh and Charan Bal Singh sons of Rajbal Singh against the judgment and decree dated 31.3.2012 passed by Civil Judge (Junior Division), Patiala, vide which the suit of the plaintiffs was partly decreed for injunction only and against the judgment and decree dated 28.8.2014 passed by learned Additional District Judge, Fast Track Court, Patiala, vide which the appeal filed by the plaintiffs-appellants has also been dismissed.

I have heard learned counsel for the appellants and have gone through the record.

The plaintiff through LRs filed suit against Rajbal Singh-defendant for declaration to the effect that the plaintiff is the owner in possession of ground floor of shop No.1039 and 1042 situated in Sheran Wala Gate, Patiala and that the defendant is owner in possession of first floor as shown in the site plan and for permanent injunction restraining the defendant, his servants, agents etc. from dispossessing or interfering, in any way, in the peaceful possession of the plaintiff over the ground floor of the aforesaid shop in view of family settlement arrived at between the parties.

The brief facts of the case as per the plaint are that the property in dispute consisting of two floors was purchased by the father of the parties to the suit through sale deed dated 20.12.1960. Father of the parties to the suit Dr. Bhagat Singh used to run his business under the name and style of Dr. Bhagat Singh and Sons, Sheran Wala Gate, Patiala. Dr. Bhagat Singh expired on 17.10.1977. During his life time, he executed a Will dated 5.11.1995, whereby he bequeathed the property in question in the name of plaintiff and the defendant and had given the said property in equal shares to the parties to the suit. It is further averred that after the death of Dr. Bhagat Singh, a settlement arrived at between the parties and by virtue of the settlement, it was agreed to that the ground floor will be owned and possessed by the plaintiff and first floor was given to the defendant. In fact, the plaintiff being doctor by profession took over the ancestral business and started running the business of Chemist & Druggist under the name and

style of Dr. Bhagat Singh and Sons. Whereas the defendant started running the business of hotel/restaurant etc. on the first floor and the said business is being done by him since the day of the settlement arrived at between the parties after the death of Dr. Bhagat Singh. The defendant is denying the title of the plaintiff over the ground floor of the shop in dispute in spite of the fact that family settlement was arrived at between the parties and it was agreed to that the plaintiff will keep the ground floor and he will run his business in the said shop.

On notice, the defendant appeared and filed his written statement and stated that no such Will as detailed pertaining to the year 1984 exists and the same is a forged and fabricated document. The defendant further submitted that no such family settlement as alleged was made between the plaintiff and the defendant. The plaintiff and the defendant are running the business of Chemist & Druggist jointly under the partnership deed, whereby the plaintiff, his son and the defendant agreed to run the business of resale of Medicines and Drugs etc. under the name and style of Mr. Bhagat Singh and Sons. The partnership deed is still in existence and has not been dissolved by any contract in writing. The business of hotel and restaurant is also run jointly by the defendant, his son and the plaintiff vide a separate partnership deed. The plaintiff has got no exclusive title to the property and no family settlement had ever been arrived at between the parties.

From the pleadings of the parties, the following issues were framed:-

- “1. Whether the plaintiff is owner of the suit property i.e. ground floor of shop No.1039 and 1042? OPP.
2. Whether the plaintiff is entitled to declaration as prayed for? OPP.
3. Whether the plaintiff is entitled to injunction as prayed for? OPP.
4. Whether the suit is not maintainable in the present form? OPD.
5. Relief.”

To prove his case, the plaintiff Jagpreet Singh (LR of plaintiff-Pritam Singh) himself stepped into the witness box as PW-1. He also tendered into evidence documents i.e. site plan Ex.P.1, certified copy of sale deed Ex.P.2, death certificate Ex.P.3, attested copy of Will Ex.P.4, and its endorsement Ex.PW.4/A, copy of Forms-C and A Ex.P.5, electricity bills, telephone bills and its receipts Exs.P.6 to P.25. He also brought the original diary of Dr. Bhagat Singh, which is Ex.PW.1/B. The plaintiff further examined witness Manjit Singh Bindra as PW.2, who deposed regarding scribing a holograph Will of 1984. PW-3 Chanan Singh deposed that he is approved Draftsman etc.

On the other hand, defendant Ashish Bal Singh (LR of defendant-Rajbal Singh) stepped into the witness box and examined himself as DW-1 and controverted all the facts. He also tendered into evidence notarized copy of family partition deed Mark-A. The defendant further examined witness Charanjit Singh as DW-2 and proved the signatures of

LRs on the family partition. The defendant also examined DW-4 Sanjit Kumar Clerk, who brought the limit account and closed his evidence.

At the time of arguments, learned counsel for the appellants argued that the Courts below have not discussed the fact regarding family settlement entered into after the death of Dr. Bhagat Singh. He also argued that no specific issue has been framed on the family settlement and prayed for remanding the case back to the trial Court.

From the perusal of the record as well as from the arguments of the learned counsel for the appellants. I find that firstly, there are concurrent findings of the Courts below regarding partly decreeing the suit of the plaintiff for permanent injunction. The appellants have not challenged the Will dated 5.11.1995, whereby the property was given in equal shares to the parties, which means the earlier desire of Dr. Bhagat Singh, on the basis of holographic Will of 1984 loses its significance and the latest Will shall prevail. When the plaintiffs/appellants are relying upon the Will dated 5.11.1995, therefore, as per this Will the property in dispute had been given in equal shares to the parties to the suit. Dr. Bhagat Singh in 1995 had not given the property as per his desire in 1984. So, as per the Will dated 5.11.1995 both the plaintiff and the defendant are held to be owners in equal shares of the property. Issue No.1 as to whether the plaintiff is owner of the suit property includes this settlement of 1995, holographic Will etc. It was for the plaintiff to prove that he had become owner on the basis of some settlement after the death of Dr. Bhagat Singh. A perusal of the pleadings as well as the evidence on record nowhere shows on which date the family

settlement had taken place. In whose presence, the family settlement had taken place and what was the terms and conditions of that family settlement.

At the time of arguments, learned counsel for the appellants argued that it was oral family settlement. Except the plaintiff, no body came to the witness box to depose regarding this oral settlement. There is no other evidence i.e. no witness to the settlement has been produced to support and corroborate the plaintiff's version. No document of any type has been produced on record from where it can be inferred that the plaintiff has become owner by way of family settlement or any settlement has been effected after the death of Dr. Bhagat Singh. Oral settlement has not been entered into in any record of the Municipal Council/Corporation etc. There is no cogent evidence produced on the record to prove this family settlement. Even no particular including the date has been mentioned when this family settlement took place. The oral statement given by PW-1 has not been admitted by the defendant. I have also gone through the cross-examination of Pritam Singh PW-1, who admitted that after the death of Dr. Bhagat Singh, the firm continued business with Pritam Singh, Rajbal Singh and Jagpreet Singh as party. After the death of Rajbal Singh, the firm unilaterally carried on between Pritam Singh and Jagpreet Singh. Death of Rajbal Singh occurred before the institution of the present suit. In the cross-examination, he also admitted that he does not remember the date of institution of present suit. This cross-examination also shows that no family settlement took place as stated by the plaintiff after the death of Dr. Bhagat Singh. As per cross-examination of Pritam Singh-plaintiff, the defendant

[7]

continued in the firm till his death.

Otherwise also, as already discussed, as there is no evidence on record regarding the family settlement, no purpose will be solved by remanding the case back to the trial Court. The findings given by the Courts below are correct and as per law. Therefore, no ground is made out for remanding the case to the lower Court.

Therefore, from the above discussion, finding no merit in the regular second appeal, the same is dismissed.

March 23, 2015.

(Inderjit Singh)
Judge

hsp