

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

RSA No. 6349 of 2014 (O&M)
Date of decision 28.04. 2015.

Swaran Kaur

..... Appellant.

versus

Sarabjit Kaur

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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. Pankaj Bhardwaj, Advocate for the appellant.

K.C.PURI, J.

Swaran Kaur-appellant-defendant has directed the present appeal against the judgment and decree dated 12.08.2014 passed by Shri Balwant Singh, learned Additional District Judge, Fast Track Court (Adhoc), Jalandhar vide which the appeal against the judgment and decree dated 09.10.2012 passed by Shri G.S.Sekhon, learned Additional Civil Judge (Junior Division), Jalandhar decreeing the suit of the plaintiff-respondent, was dismissed.

2. The brief facts of the present case are that Sarabjit Kaur filed

suit before the trial Court for decree of declaration to the effect that the plaintiff is joint owner in possession of $\frac{1}{2}$ share of the southern side of the residential house situated at Sodal Road, Jalandhar as detailed in the head note of plaint and half share in residential house situated at village Ball, Tehsil and District Jalandhar as detailed in the head note of the plaint and further plaintiff is owner of $\frac{1}{12}$ share of the land measuring 88 kanals 13 marlas as detailed in the head note of the plaint and suit for permanent injunction restraining the defendant from alienating by way of sale, gift, lease, mortgage or in any manner.

3. It is alleged that plaintiff was married to Narinder Pal Singh on 12.04.2000 as per Sikh Religious Rites and Narinder Pal Singh husband of the plaintiff is the son of defendant and Bhawikhan Singh (deceased husband of the defendant). After the marriage, the plaintiff and Narinder Pal Singh lived and cohabited together as husband and wife for some time but thereafter Narinder Pal Singh started ignoring and harassing the plaintiff and ultimately he refused to keep and maintain the plaintiff. Narinder Pal Singh refused to sponsor the plaintiff for immigration visa to England where Narinder Pal Singh is residing. Plaintiff wants to continue her marriage at every cost and does not want to leave Narinder Pal Singh being a Hindu lady. Thereafter, it was decided that plaintiff being a young lady has to maintain herself during the rest of her life and that arrangement should be made for her maintenance for life. On the intervention of respectable and relations of the parties a family settlement was arrived at between the plaintiff and deceased husband of the defendant, to put an end to the dispute

going on between them and Narinder Pal Singh. Ultimately, it was decided that plaintiff became owner of half share in the house situated at Sodal Road, Jalandhar as fully detailed in the head note of the plaint as well as memorandum of family settlement as shown in the site plan attached. Oral family settlement was reduced into writing on 22.5.2004 and the same was read over and explained to the parties. The defendant refused to desist the claim of the plaintiff. Hence the suit.

4. On notice, defendant appeared and filed written statement raising preliminary objections that plaintiff has no locus standi to file the present suit. Plaintiff has no relation with the defendant and she is not entitled for any property detailed in the head note of the plaint. Suit is bad for misjoinder and nonjoinder of necessary parties and suit is barred as per Section 34 of Specific Relief Act. Plaintiff is not in possession of any part of the property in dispute and no suit for declaration is made out as per law. Suit is not maintainable and plaintiff has no cause of action to file the suit. Suit of the plaintiff is barred by his own acts, conduct and omission. It is further alleged that plaintiff has not come to the Court with clean hands and concealed the material facts from the court. There is no oral settlement or memorandum of any settlement ever took place between plaintiff or husband of defendant. Defendant and her husband have not any child, Bhawikhan Singh died issue-less and his all property was inherited by defendant on the basis of registered Will dated 28.04.2003. The mutation has been sanctioned in favour of the defendant. The alleged memorandum of family settlement is neither registered nor stamped as per law and is not

readable in evidence. On merits, defendant denied all other averments and prayed for dismissal of the suit.

5. Replication was filed, from the pleadings of the parties, following issues were framed :-

1. Whether the plaintiff is entitled to the relief of declaration, as prayed for ? OPP
2. Whether plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP
3. Whether the plaintiff has no locus-standi and cause of action to file the present suit ?OPD
4. Whether the suit is bad for misjoinder and nonjoinder of necessary parties ?OPD
5. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
6. Whether the defendant alone has inherited the entire suit properties on the basis of registered Will dated 28.04.2003 ? OPD
7. Relief.

6. The parties have led their respective evidence on the aforesaid issues. After appraisal of the same, the trial Court vide judgment and decree dated 09.10.2012 decreed the suit of the plaintiff with costs.

7. Feeling dissatisfied with the aforesaid judgment and decree dated 09.10.2012, the defendant has directed the First Appeal, which was dismissed by learned Additional District Judge, Jalandhar vide judgment and decree dated 12.08.2014 after re-appraisal of the evidence.

8. Still feeling dissatisfied with the judgment and decree dated 09.10.2012 and judgment and decree dated 12.08.2014, the present regular second appeal has been directed.

9. The appellant in paragraph No.14 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (a) Whether the impugned judgments are illegal, erroneous, perverse and not based on evidence on record and against the set tenets of law?
- (b) Whether the alleged memorandum of family settlement confers any interest in the property in question in view of the fact that it is not registered as required under Section 17 of the Registration Act, 1908 ?
- (c) Whether the civil suit is barred under Section 34 of the Specific Relief Act, 1963 ?
- (d) Whether the respondent/plaintiff has discharged the onus to prove the factum of relationship of late Shri Narinder Pal Singh with the parties, execution of the alleged family settlement ?
- e) Whether the Court has committed illegality by not framing proper issues, which has cause prejudice to the appellant/defendant?

10. I have heard learned counsel for the appellant and have gone through the records of the case.

11. Learned counsel for the appellant, during the course of arguments, has submitted that family settlement being unregistered is inadmissible in evidence. It is submitted that the said family settlement is not proved in accordance with law. Since right in the property valuing more than Rs.100/- are involved and as such the family settlement being unregistered does not confer any legal right on the plaintiff/respondent.

12. I have carefully considered the said submission but do not find any force in that submission.

13. Family settlement which is executed to resolve the family dispute inter se does not require any registration in view of authority **Kale and others vs. Deputy Director of Consolidation and others reported in 1976 AIR (SC) page 807.** The family settlement was arrived at as the right of maintenance of the plaintiff was to adhere to. Sarabjit Kaur has married with Narinderpal Singh son of the appellant in the year 2000, although the defendant has disputed the factum of marriage of Sarabjit Kaur with Narinderpal Singh but there is finding of fact recorded by both the Courts below that Sarabjit Kaur was legally married to Narinderpal Singh. There are voluminous documentary evidence in this regard also. The marriage registration certificate which is conclusive proof of marriage has also been produced by the plaintiff Sarabjit Kaur. Moreover Sarabjit Kaur has placed on record the bank record in which she is a joint holder of account along with the defendant/appellant herself. The counsel for the appellant has tried to explain the said transaction by arguing that she was made servant and on that account joint account was opened by the appellant with plaintiff but that submission is also simply to wriggle out from the document. Moreover, finding of fact recorded by both the Courts below cannot be agitated in the regular second appeal, more-so when there is nothing on the record that said findings are result of misreading and misinterpreting and the same are perverse.

14. The other point raised by counsel for the appellant is that suit for mere declaration is not maintainable inasmuch as when the plaintiff is not in possession of the suit property.

15. I have considered the said submission.

16. From the perusal of the family settlement, it is revealed that half share of the house and half share of the property has been given to the plaintiff now respondent. So, in case of cosharer, possession of joint owner would be deemed to be that of other cosharer. So, the above said arguments are also without any merit. Authority **Union of India vs. Ibrahim Uddin and another reported in (2012) 8 Supreme Court Cases page 148 (S.C.)** relied upon by counsel for the appellant in this regard is distinguishable as in that case, ownership was claimed against Union of India, at no stretch of imagination, it can be said that plaintiff would be a co-sharer. So, the above said authority is distinguishable.

17. Further, there is nothing on the file to show that proper issues have not been framed. No specific point has been argued regarding issues before me. It cannot be said that judgments of both the Courts below are illegal, erroneous or perverse and are not based upon the evidence placed on the record and against the law. No doubt, the onus to prove the relationship of the plaintiff with Narinderpal Singh was upon the plaintiff-respondent but the plaintiff-respondent has produced sufficient oral as well as documentary evidence on the file to prove her relationship with Narinderpal Singh.

18. So, in view of the above discussion, all the questions of law raised by the appellant in paragraph No.14 of the grounds of appeal stand answered against the appellant and consequently, the appeal is meritless and the same stands dismissed.

19. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

April 28 , 2015
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