

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

-.-

RSA 4060 of 2010 (O&M)
Date of decision: 08/09.03.2016

Sajjan Singh

..... *Appellant*

Versus

Sudesh and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: None for the parties

-.-

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

Counsel for the parties (Mr. Lokesh Sinhal, Advocate for the appellant and Mr. Harkesh Manuja, Advocate for the respondents) have already advanced their arguments on the previous dates of hearing, however, the case is being disposed of today in their absence, as Lawyers are abstaining from work.

The present appeal has been directed against the judgments and decrees passed by the Courts below whereby the suit filed by the plaintiff/appellant was dismissed by the Additional Civil Judge (Senior Division) Panipat vide the judgment and decree dated 15.09.2009 and findings recorded by the trial Court were affirmed by the Additional District Judge, Panipat vide the judgment and decree dated 31.05.2010, dismissing the appeal preferred by Sajjan Singh (appellant herein).

The present litigation pertains to plots No. 456-R, 457-L and

457-R situated in Model Town, Panipat between Sajjan Singh-appellant and Sanjeev Singh (since deceased), his brother now represented by respondents No. 1 to 3 whereas respondents No. 4 to 7 are the purchasers of the portion measuring 50'x72' vide sale deeds bearing Vasika Nos. 5382 and 5383 dated 28.10.2002 executed by respondent No. 1 for herself and on behalf of her minor sons, respondents No. 2 and 3 in favour of respondents No. 4 to 7. The plea of the appellant is that the appellant and Sanjeev Singh sold away part of plot No. 457-R, Model Town, Panipat vide registered sale deed bearing vasika No. 2943 dated 05.08.1986 to Shri Ranbir Singh. There was a dispute between him and his brother which was settled by way of partition-cum-family settlement in writing that took place on 19.08.1991, according to which, an area measuring 38'.4"x72' of plot No. 456-R marked by letters 'FBCG' fell to the share of Sanjeev Singh and an area measuring 72'.8"x72' which includes Northern portion of plot No. 456-R and entire area of plot No.457-L marked by letters 'EFGH' fell to his share. The said partition cum family settlement was subject to condition that neither he nor Sanjeev Singh or their successors-in-interest would alienate their share to any person without written consent of other party or without getting the partition through the Court. Sanjeev Singh died on 16.10.2000 leaving behind his legal heirs and on 09.12.2001, Smt. Sama Kaur, his mother passed away leaving behind her legal heirs. The family members of Sanjeev Singh, without his knowledge sold away illegally and unauthorisedly more area than entitlement of Sanjeev Singh vide registered sale deeds dated 28.10.2002.

Respondents No. 1 to 3 filed the written statement, raised preliminary objections, *inter alia*, on the grounds of maintainability of the suit; locus standi of the plaintiff; concealment of material facts from the Court. On merits, it is averred that Sanjeev Singh was the lawful owner to the extent of half share in properties No. 456-R, 457-L and 457-R vide the judgment and decree dated 12.10.1985 passed in civil suit *Sajjan Singh and others v. Harkesh Singh* registered at Vasika No. 4350/1 dated 12.12.1985. The appellant has concealed the written family settlement-cum-partition qua above said properties dated 30.05.1999 and 30.07.1999 and has wrongly alleged that family settlement dated 19.08.1991 was never cancelled. The total front of the aforesaid three properties after selling 35' of front by Sajjan Singh and Sanjeev Singh jointly comes to 115'x72'. The area measuring 57-1/2'x72' belongs to Sanjeev Singh. The mutual partition was effected on 30.05.1999 and as a result, left portion measuring 50'x72' comprising plot No. 456-R Model Town, Panipat fell to the share of Shri Sanjeev Singh. The said area has been sold by the answering defendants to defendants No. 4 to 7 after seeking due permission from the civil Court as defendants No. 2 and 3 were minors and defendant No. 1 is the mother and natural guardian of the minors.

A separate written statement was filed on behalf of defendants No. 4 to 7 wherein they had raised a similar plea as has been taken by defendants No. 1 to 3.

The learned trial Court in view of discussion in paras 13 and 14 of the judgment, after taking into consideration the partition-cum-

family settlement dated 19.08.1991, subsequently modified by family settlements dated 30.05.1999/30.07.1999, came to hold that respondents No. 4 to 7 have become owners in exclusive possession of the properties atleast to the extent of $\frac{3}{4}$ th share plus $\frac{1}{7}$ th share of defendants No. 1 to 3 in the suit properties of Sanjeev Singh and they are entitled to use the same in any manner they like. Accordingly, issues No. 1 to 3, taken up jointly, were answered against the appellant and in favour of the defendants. Issues No. 4 to 8 were answered against the defendants and eventually suit filed by the appellant was ordered to be dismissed.

Sajjan Singh preferred an appeal to assail the judgment and decree passed by the learned trial Court but the same did not find favour with the Additional District Judge, Panipat. The appellate Court in para 15 of the judgment has held that the family settlement dated 19.08.1991 was not final and further efforts continued to be made to arrive at a family settlement/partition, therefore, the plaintiff could not claim any right on the basis of said family settlement. As the family settlement dated 19.08.1991 or 30.05.1999/30.07.1999 were not finally accepted and implemented, the joint properties were not partitioned between the plaintiff and his brother by *metes and bounds* and as such, the same continued to be their joint properties.

Feeling aggrieved against the findings recorded by the Courts below, the present appeal has been preferred by an unsuccessful plaintiff/appellant.

Counsel for the appellant has submitted that the first appellate Court has made out entirely a different case than what was the

stand of the parties in the plaint and the written statement respectively. It is further argued that civil dispute between the parties is to be decided on the basis of pleadings giving rise to disputed questions of facts and law in the shape of issues framed for adjudication and in the light of the evidence adduced to substantiate the rival claims. It is further argued that the appellant staked his claim on the basis of family partition-cum-settlement dated 19.08.1991, giving a detailed account of the area which fell to the respective shares of appellant Sajjan Singh and Sanjeev Singh. As respondents No. 1 to 3 have not specifically denied those allegations in response to para 2 in the written statement, it will be taken as an admission on their part. The appellant, though has not admitted the family settlements dated 30.05.1999 and 30.07.1999 mark X1/D1 and mark B respectively but even if these documents are taken into consideration, as per clause 3 of family settlement dated 30.07.1999 mark B, Sanjeev Singh or his successors-in-interest were not competent to sell an area measuring 11'.8"x72' without approval of Sajjan Singh appellant. The Courts below have failed to appreciate pleadings of the parties, documents dated 19.08.1991 (mark A), dated 30.05.1999 (mark X1/D1) and dated 30.07.1999 (mark B) in right perspective and thus committed a serious error by holding that either Sanjeev Singh was competent to alienate $\frac{3}{4}$ th share plus $\frac{1}{7}$ th share out of area measuring 50'x72' or they were competent to sold the entire area to the extent of 50'x72' in favour of respondents No. 4 to 7. According to learned counsel, respondents No. 1 to 3, at best, could alienate $\frac{3}{4}$ th share out of area measuring 38'.4"x72' to the extent of share of Sanjeev Singh plus $\frac{1}{7}$ th share out of

remaining 1/4th share inherited from Smt. Sama Kaur and sale in access of the aforesaid by respondents No.1 to 3 is no sale in the eyes of law as no one can pass a better title than he himself has.

Counsel for the contesting respondents (subsequent purchasers) has supported the judgments passed by the Courts below with the submissions that the partition-cum-family settlement dated 30.05.1999 and 30.07.1999 are not valid documents for want of signatures of Shri Sanjeev Singh as there could not be any family settlement without Sanjeev Singh being a signatory to the documents. In the alternative, it is submitted that if the documents mark X1/D1 and mark B are taken into consideration, clause 3 of document mark-B is void being in violation of the provisions of Section 10 of the Transfer of Property Act, 1882 (in short, 'the Act'), dealing with the conditions restraining alienation.

Another submission made by counsel is that as respondents No. 4 to 7 are in exclusive possession of an area measuring 50'x72', the suit filed by the appellant for declaration without consequential relief of possession is not maintainable under Section 34 of the Specific Relief Act, 1963 (in short, the 1963 Act).

I have already heard counsel for the parties on previous dates of hearing, perused the paper book and records of the Courts below with their able assistance.

The substantial questions of law which arise for adjudication are:-

- i) Whether the parties can have an escape from the documents i.e. family settlement dated

30.05.1999 (mark X1/D1) and dated 30.07.1999 (mark B)?

- ii) Whether suit of the appellant claiming declaration without consequential relief of possession is maintainable?

The appellant in para 2 of the plaint has raised a categorical plea in respect of written partition-cum-family settlement dated 19.08.1991 with detailed particulars of the area and its location that fell to the respective share of Sanjeev Singh and the appellant. Respondents No. 1 to 3 in response thereto by way of reply to para 2 have admitted the factum of the family settlement-cum-partition having taken place on 19.08.1991 between Shri Sajjan Singh plaintiff and his brother Sanjeev Singh. However, they did not give any specific reply in regard to the extent of area and description thereof and the same amounts to an admission on their part. In para 2, the respondents raised a plea that subsequent family settlement-cum-partition of the properties was also done on 30.05.1999 and 30.07.1999 and the same was reduced in writing and bears the signatures of the plaintiff and other witnesses. It is further averred that portion measuring 50' x 72' of plot No. 456-R, Model Town, Panipat fell to the share of Shri Sanjeev Singh and actual possession of the said area was given to Shri Sanjeev Singh and he became exclusive owner in possession of area measuring 50' x 72' of plot No. 456-R, Model Town, Panipat. Admittedly, the appellant did not file replication to the written statement of respondents No. 1 to 3 either to admit or deny the factum of family settlement-cum-partition dated 30.05.1999 and 30.07.1999. On a pointed query raised by the Court, counsel for the

appellant has fairly conceded that for want of filing of replication, the plea raised in the written statement by the respondents is to be treated as an admission on the part of the appellant in regard to family settlements-cum-partition dated 30.05.1999 and 30.07.1999. In this view of the matter, the documents mark A, X1/D1 and mark B are liable to be read into evidence for the purpose of adjudication of the matter in controversy.

I would hasten to add that though the documents mark X1/D1 and mark B do not bear signatures of Shri Sanjeev Singh, predecessor-in-interest of respondents No. 1 to 3, but as these documents have been set up by the defendants themselves, they cannot wriggle out of these documents by raising a plea that the same do not bear signatures of Shri Sanjeev Singh.

The family settlement dated 19.08.1991 (Mark A) was modified by the family settlements dated 30.05.1999 and 30.07.1999 respectively. The question that calls for determination is “*what is the effect of family settlements dated 30.05.1999 and 30.07.1999 qua share of Shri Sanjeev Singh in the properties in question?*”

As per family settlement dated 30.05.1999, Shri Sanjeev Singh was given an area measuring 50' x 72' of plot bearing No. 456-R depicted in green colour with letters 'EFGH' in the site plan, a part of the document on page 3. However, the family settlement dated 30.05.1999 was further modified vide family settlement dated 30.07.1999 (mark B). Clauses 1 and 3 of the family settlement dated 30.07.1999, by way of translation in English, reads as follows:-

“1) That the actual partition of the property was got effected by Shri Kehar Singh father of the parties about 8

years ago on 19.08.1991 but later on 30.05.1999, at the instance of some members of the family, relatives and friends, a mutual agreement was reduced into writing after effecting certain changes in the area incorporated in the actual settlement (assal faisla). Today, after two months on 30.07.1999, the conditions of settlement have been finalized which are as under:-

xxx xx

3) That by way of change in the actual partition, Sanjeev Singh (second party) has been given more area measuring 11'.8"x72' only for the purpose of use and not for the purpose of sale. Meaning that in the eventuality of sale, the decision dated 19.08.1991 would apply or it would be sold with the consent of Sajjan Singh (first party).

A conjoint reading of three settlements dated 19.08.1991, 30.05.1999 and 30.07.1999 makes it evident that Shri Sanjeev Singh was finally given an area measuring 11'.8"x72' beyond an area measuring 38'.4"x72' only for the purpose of use and not for the purpose of sale. As Shri Sanjeev Singh was not competent to sell an area measuring 11'.8"x72' or he was not competent to sell an area in excess of area 38'.4"x72' given to him in the original family settlement dated 19.08.1991, the sale of area more than 38'.4"x72' by the successors-in-interest of Shri Sanjeev Singh in favour of respondents No. 4 to 7 cannot create any valid title in their favour.

So far as plea of the respondents that condition in the family settlement dated 30.07.1999 against alienation by Shri Sanjeev Singh or his successors-in-interest would be hit by the provisions of Section 10 of the Act, the same is misconceived and merits rejection. Section 10 of the

Act deals with an absolute restraint upon the transferee or any person claiming under him from parting with or disposing of his interest in the property. In the case at hand, condition restraining alienation is not absolute but it was partial to the extent of obtaining consent of the other party.

This brings the Court to another issue if respondents No. 1 to 3 were entitled to sell an area measuring 38'.4"x72'. Shri Sanjeev Singh became owner of an area measuring 38'.4"x72' as per the settlement between the parties. Concededly, Shri Sanjeev Singh passed away in the year 2000 leaving behind four class-I heirs *namely* Sudesh (widow), Randip Singh, Karan Singh (sons) and Smt. Sama Kaur, the mother. The property left behind by Shri Sanjeev Singh was inherited by all Class-I heirs to the extent of 1/4th share each and in this manner, respondents No. 1 to 3 were competent to alienate an area measuring 38'.4"x72' to the extent of 3/4th share. Smt. Sama Kaur left behind seven Class I heirs *namely* Sajjan Singh (appellant), successors-in-interest of her pre-deceased son Sanjeev Singh (respondents No. 1 to 3) and five daughters *i.e.* Chand Kaur, Suman Lamba, Krishna Nandal, Asha and Sunita. Respondents No. 1 to 3 have raised plea in para 3 that Smt. Sama Kaur, mother of Shri Sanjeev Singh refused to take any share in the property left behind by Shri Sanjeev Singh. There cannot be any quarrel with the settled position in law that in order to relinquish right in any immovable property, a registered deed is required if value thereof is more than Rs.100.00. The respondents have failed to adduce any evidence to substantiate their plea that Smt. Sama Kaur relinquished her right in the

estate of Shri Sanjeev Singh in a legal and lawful manner. There is no such plea raised by the parties that Smt. Sama Kaur left behind any testament. Under these circumstances, share of Smt. Sama Kaur to the extent of $\frac{1}{4}^{\text{th}}$ in an area measuring 38'.4"x72' previously owned by Shri Sanjeev Singh would be inherited by her Class-I heirs to the extent of $\frac{1}{7}^{\text{th}}$ share each. In this manner, respondents No. 1 to 3 became entitle to alienate another $\frac{1}{7}^{\text{th}}$ share out of $\frac{1}{4}^{\text{th}}$ share i.e. $\frac{1}{28}^{\text{th}}$ share out of an area measuring 38'.4"x72'. To sum up, respondents No. 1 to 3 were entitled to alienate $\frac{3}{4}^{\text{th}}$ plus $\frac{1}{28}^{\text{th}}$ share out of area measuring 38'.4"x72' and sale deed (s) in favour of respondents No. 4 to 7 shall be valid only to that extent.

With these observations, question No. 1 is answered in favour of the appellant.

The appellant has filed a suit for declaration and has not claimed relief of possession in respect of the area that was sold in excess by respondents No.1 to 3 in favour of respondents No. 4 to 7. Section 34 of the 1963 Act provides that a suit for declaration without seeking a consequential relief is not maintainable. In the case at hand, Smt. Sama Kaur inherited to the estate of Shri Sanjeev Singh to the extent of $\frac{1}{4}^{\text{th}}$ share. She passed away in the year 2001 prior to execution of sale deed (s) dated 28.10.2002 in favour of respondents No. 4 to 7. The appellant is admittedly one of the Class-I heirs of Smt. Sama Kaur and thus became entitle to $\frac{1}{7}^{\text{th}}$ share out of $\frac{1}{4}^{\text{th}}$ share inherited by Smt. Sama Kaur. Under these circumstances, the appellant became a co-owner in the estate left behind by Shri Sanjeev Singh. There is nothing on record suggestive

of the fact that the property left behind by Shri Sanjeev Singh was ever partitioned amongst its co-owners. As the appellant is one of the co-owners in the estate left by Shri Sanjeev Singh and thus entitled to its joint possession, the suit filed by the appellant for declaration without claiming possession is maintainable.

Accordingly, question No. 2 is answered in favour of the appellant and against the respondents.

In view of what has been discussed here-in-above, the findings recorded by the Courts below cannot be allowed to sustain. As a result, the appeal is allowed in the aforesaid terms. Any construction raised on an area measuring 50'x72' by respondents No. 4 to 7 would be subject to adjustment during partition proceedings.

(Rekha Mittal)
Judge

08/09.03.2016
mohan bimbra