

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

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Regular Second Appeal No.619 of 2015 (O&M)

Date of Decision: January 08, 2016

Bittu and others

...Appellants

Versus

Kamlesh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rohit Ahuja, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the District Judge, Jalandhar, dated 25.08.2014, whereby the appeal preferred by the respondents-plaintiffs against the judgment and decree dated 01.02.2013 passed by the Additional Civil Judge (Senior Division), Jalandhar, dismissing the suit for separation of possession of 1/4th share jointly owned by the respondents-plaintiffs in the shop, details of which have been given in the head note of the suit, stands allowed resulting in decreeing the suit.

2. It is the contention of learned counsel for the appellants-defendants that in the absence of the original conveyance deed dated 31.05.1956 Mark D, the title being not established of that of Chuni Lal, the share could not have been claimed by the respondents-plaintiffs. His further submission is that there was a family settlement which has taken place on the basis of which an agreement dated 06.06.1986 Exhibit D-1 was entered into between the predecessor-in-interest of Darshan Lal and Jung Bahadur his brother by Som Nath. As per this family settlement for an amount of ₹20,000/- which

Som Nath has received, he has relinquished his 1/5th share in the shop in question and, therefore, the claim having been relinquished to the extent of his share in the property by the predecessor-in-interest of the respondents-plaintiffs i.e. Som Nath, their suit could not have been decreed. He contends that the family settlement is not required to be registered and further the said document has to be seen in the context of the language used in the same that would determine the purpose for which it was executed. The language of the document itself is to be looked into to see the nature of the said document. He, thus, contends that as per the language of the said document Exhibit D-1, it clearly being a family settlement, did not require registration. He further contends that not only did Som Nath relinquish his claim, respondent No.7/defendant No.5-Sat Pal had also relinquished his share in favour of Swarn Kaur alias Swarna Rani widow of Narayan Dass son of Chuni Lal again for ₹20,000/-. The said document dated 22.05.1986 is Exhibit D-2. Similarly Jung Bahadur, another co-owner of the property and son of Chuni Lal had also relinquished his share by agreement dated 08.05.1998 for an amount of ₹40,000/- in favour of Swarn Kaur alias Swarna Rani and in the said document, it has specifically been mentioned with regard to the earlier deeds Exhibits D-1 and D-2. He, on this basis, contends that the family settlement between the parties, is fully established with reference to these documents Exhibits D-1 to D-3. He, thus, contends that the judgment and decree passed by the learned Lower Appellate Court, cannot sustain and deserves to be set aside.

3. Reliance has been placed upon the judgment of Hon'ble Supreme Court passed in case titled as *Prakash Roadlines (P) Ltd. Versus Oriental Fire & General Insurance Co. Ltd.* 2000(10) SCC 64. Reliance has

also been placed upon the judgment of this Court passed in case titled as *Kishan Chand and another Versus Prem Chand and others 2008(3) R.C.R.(Civil) 436*, in support of his contention that the family settlement is not required to be registered and will be admissible in evidence subject to other proofs of its execution.

4. I have considered the submissions made by learned counsel for the appellants but cannot persuade myself to accept the said contentions.

5. The first contention, as has been raised by the counsel for the appellants, is that the conveyance deed dated 31.05.1956 is only a marked document which would have conferred the right upon Chuni Lal and, therefore, is not admissible in evidence and could not have been relied upon by the Courts below to hold it conferring title upon Chuni Lal, who was the predecessor-in-interest of the parties to the suit. The contention as raised would have had force but for the admission with regard to the title and ownership of Chuni Lal of the property in dispute. All the three witnesses, who had appeared for the appellants-defendants, have admitted with regard to the ownership of Chuni Lal as also the factum that on the death of Chuni Lal, all his sons have inherited his property equally including now deceased Som Nath and became co-owners to the extent of 1/5th share. Admission is the best evidence and in the light of the said position keeping in view the provisions as contained in Sections 17, 18 and 21 of the Indian Evidence Act, 1872, the learned Lower Appellate Court has rightly accepted the claim of the respondents-plaintiffs to the extent that they are predecessors-in-interest and had a share in the property as Chuni Lal admittedly is the owner of the property in dispute. No fault, thus, can be found with regard to the findings so recorded by the Lower Appellate Court

in this regard.

6. As regards the contention of learned counsel for the appellants that the family settlement is not required to be registered also cannot be denied as per the settled preposition of law as also the judgment of this Court in *Kishan Chand and another's case (supra)*. It is also not of any dispute that the document has to be interpreted not by its nomenclature to determine its nature. The judgment of the Supreme Court as relied in *Prakash Roadlines's case (supra)* also, therefore, is a guiding principle on the same.

7. Now applying the principles as laid down in the above judgments to the present case, it has been contended that Som Nath, the predecessor-in-interest of the respondents-plaintiffs, had relinquished his share in the property on receipt of ₹20,000/- by agreement dated 06.06.1986 Exhibit D-1. Admittedly, the said document is unregistered and unstamped, although scribed on a stamp paper of ₹3/- only. The said document although has been mentioned as an agreement, the language thereof clearly indicates that it was an agreement to sell as it is clearly mentioned therein that sale deed could be executed at any time at the instance of Darshan Lal and Jung Bahadur, the sons of Chuni Lal. There is a rider also that in case Som Nath back out of the said agreement, he would have to pay an amount of ₹40,000/- and in case of refusal by Som Nath, the beneficiaries could approach the Court for execution of the same. Applying the above principles, therefore, leaves no manner of doubt that it is an agreement to sell which has been entered into between the parties and not a family settlement, as has been sought to be asserted. The findings, thus, recorded by the Lower Appellate Court being in accordance with law, do not call for

any interference.

8. As regards the contention of learned counsel for the appellants that the documents Exhibits D-1 to D-3 have been duly proved on record, reference has specifically been made to Exhibit D-3, where there is a recital that there has been earlier also two relinquishment of the claims, one of which is with regard to Som Nath. Reference thereof is to Exhibit D-1 and, therefore, it is not a document, which would be termed as an agreement to sell but is a family settlement. This contention of counsel for the appellants also cannot be accepted in the light of the settled principles of law in the judgments referred to above, where it has been held that the document has to be interpreted not by its nomenclature but what its contents are. Having held above that the document Exhibit D-1 to be an agreement to sell and not a relinquishment deed or a family settlement, the said assertion of the counsel for the appellants, stands rejected.

9. In view of the above, finding no merit in the present appeal, the same stands dismissed.

10. Counsel for the appellants, at this stage, states that liberty may be granted to the appellants to avail of the remedy in accordance with law qua the document Exhibit D-1.

11. It is made clear that whatever rights flow from whichever document, it is the domain of the parties concerned and if permissible in law, may avail of the remedy in accordance with law.

12. In the light of the dismissal of the appeal, all the pending applications stand disposed of.

January 08, 2016

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**(AUGUSTINE GEORGE MASIH)
JUDGE**