

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

1. RSA No.2783 of 2012 (O&M)
Date of decision : 23.08.2017

Sewak Singh

...Appellant

Versus

Supinder Singh

...Respondent

2. RSA No.1060 of 2013 (O&M)
Date of decision : 23.08.2017

Supinder Singh

...Appellant

Versus

Sewak Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Vijay Lath, Advocate for the appellant.
(In RSA No.2783 of 2012) and
for the respondent (In RSA No.1060 of 2013).

Mr. C.M. Munjal, Advocate for the respondent.
(In RSA No.2783 of 2012)
for the appellant (In RSA No.1060 of 2013).

ANIL KSHETARPAL, J.

CM No.7461-C of 2012

This is an application filed under Order 41 Rule 27 read with
Section 151 CPC for permission to lead additional evidence, a report of

Tehsildar.

Having heard learned counsel for the parties, I do not find any good ground to allow the application for additional evidence. The report sought to be produced in additional evidence only shows that the plaintiff had availed certain loan which has been paid back. Such certificate would not prove the ownership of the plaintiff. Therefore, the application for additional evidence is dismissed.

Main Cases

By this common judgment, I shall be disposing of two RSA bearing No.2783 of 2012 and RSA No.1060 of 2013.

These two appeals are arising out of the Civil Suit No.675 dated 09.06.2001. RSA No.2783 of 2012 has been filed by the plaintiff whereas RSA No.1060 of 2013 has been filed by the defendant. The plaintiff had filed a suit for possession by way of partition with respect to the properties mentioned in the head note of the plaint as A, B, C and D. The plaintiff and defendant are brothers. Property No.A is alleged to be jointly purchased by the plaintiff and defendant vide sale deed dated 07.03.1967. Properties shown as B and C are alleged to have been inherited from forefathers. It is the claim of the plaintiff that the property D exclusively belong to him and he is owner in possession thereof. It is submitted that the plaintiff took loan on this property and constructed a house. In the alternative, the plaintiff claims that he is in joint possession of the property D, if plaintiff fails to prove the property D to be his exclusive property.

The defendant filed written statement. The defendant took a plea that no doubt property No.A, B, C and D were joint between the parties, however, the properties have already been partitioned. It was further asserted that with respect to property No.D, the construction was not only carried out by the plaintiff but also by the defendant as he contributed a sum of ₹86,000/- which was paid to the plaintiff.

It was further claimed that the plaintiff had earlier filed a suit for permanent injunction against the defendant and in that suit, the compromise was effected between the parties. Therefore, parties have accordingly settled their disputes and the properties have already been partitioned.

The learned trial Court after appreciating the evidence available on the file held that the defendant has not been successful in establishing that there was earlier partition of the property and it was duly incorporated in the revenue record. The Court held that the properties mentioned in the head note of the plaint, A, B, C are joint and, therefore, primarily decree of partition was passed. However, the suit for declaration that the plaintiff is exclusive owner of the property mentioned as D was ordered to be dismissed.

Two appeals were preferred before the First Appellate Court. One by the plaintiff and second by the defendant. The learned First Appellate Court after re-appreciating the evidence available on the file dismissed both the appeals. The First Appellate Court after thoroughly examining the documents available on the file has recorded a finding of fact

that the plea of the defendant that parties had already partitioned the property in view of settlement Ex.D2 and Ex.D3, is not established on file as the parties have not been honoured the settlements and such documents cannot be held to be final partition between the parties. Ex.D2 and Ex.D3 can only be said to be temporarily settling the dispute between the parties with regard to the separate possession. The learned First Appellate Court also held that no doubt the partition of the agriculture land took place by the revenue authorities through Ex.PX, Ex.PY and Sanad Taksim Ex.PZ. The Court further considered the documents Ex.D10 and Ex.D8 and held the parties had only separated the possession. However, the partition of the property was not carried out.

The learned First Appellate Court further held that the plaintiff has failed to produce any documents proving that the property marked as D in the headnote of the plaint, was exclusively owned by the plaintiff. The First Appellate Court further considered that the present suit is only barred under Order 2 Rule 2 CPC nor under the provision of Order 11 CPC. Two appeals have been preferred by the plaintiff and defendant.

During the pendency of the appeals, matter was referred to the Mediation Centre attached with this Court as dispute was amongst the brothers. Before the Mediator, the parties entered into some settlement. The settlement was signed. However, later on plaintiff-appellant chose to file objections against the report submitted by the Mediator.

Learned counsel for the defendant has asserted that the appellant has been entering into the settlement and thereafter resiling thereof. He further submits that once there is settlement between the parties

which was duly signed before the Mediator, both the appeals are to be disposed of in terms of the settlement signed before the Mediator.

I am afraid the contention of the counsel for the defendant cannot be accepted. Mediators are only required to mediate between the parties and get the dispute sorted out with their consensus. However, the report of the Mediator is to be ultimately acted upon by the Court. The report of the Mediator is not a decree of the Court. The plaintiff has filed objection to the report submitted by the Mediator. Therefore, the appeals cannot be disposed of in terms of the report of the Mediator.

At this stage, it would be relevant to extract Rules 23 and 24 of Mediation/Conciliation Rules framed by this Court:-

“RULE 23: Settlement Agreement:

(1) Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced into writing and signed by the parties or their power of attorney holders. If any counsel have represented the parties, they shall attest the signatures of their respective clients.

(2) The agreement of the parties so signed and attested shall be submitted to the mediator/conciliator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending.

(3) Where no agreement is arrived at between the parties, before the time limit specified in rule 17 or where, the mediator/conciliator is of the view that no settlement is possible, he shall report the same to the Court in writing.

RULE 24: Court to fix a date for recording settlement and passing decree:

(1) Within seven days of the receipt of a settlement, the

Court shall issue notice to the parties fixing a date for their appearance which date shall not be beyond 14 days from the date of receipt of the settlement and the Court shall then take the settlement on record.

(2) Thereafter, the Court shall pass a decree in accordance with the settlement, so taken on record, if the same disposes of all the issues in the suit.

(3) If the settlement disposes of only certain issues arising in the suit, the Court shall take on record the settlement on the date fixed and shall include the terms of the said settlement in the judgment, while deciding the other issues.”

It is clear from the reading of the Rule 24, that the Court is to pass a decree in accordance with the settlement after issuing notice to the parties fixing the date for their appearance. However, in the present case, the plaintiff has filed objections and are not agreeing to the report of the Mediator. Therefore, it is not possible to establish that once a Mediator makes a report with the consent of the parties, the Court is bound to pass a decree even if one of the party objects to the report.

Learned counsel for the plaintiff has submitted that there is overwhelming evidence available on the file to prove that the property marked as D in the plaint is exclusive property of the plaintiff. He submitted that it is proved on the file that the plaintiff constructed the house thereon after taking loan and defendant has failed to prove that he has contributed to the construction. He further submitted that in the alternative, the finding should be recorded that the construction belongs to the plaintiff.

I have considered the submission. However, I find no force in

it. The plaintiff has failed to produce any documents of title to prove that the property belongs exclusively to plaintiff. In absence of the documents of title, it is not possible to grant declaration in favour of the plaintiff with respect the property marked as D in the headnote of the plaint. The plaintiff has even failed to prove that the construction was carried out by the plaintiff exclusively, therefore, even declaration to the extent that it is only the plaintiff who is owner of the construction on the land marked as D cannot be granted.

Learned counsel for the defendant-appellant has submitted that this Court should draw inference that the plaintiff has been backing out from the settlement arrived at time and again. The plaintiff earlier also in the suit for injunction, entered into a settlement but resiled. Learned counsel for the defendant has submitted that the suit filed by the plaintiff be dismissed and properties A, B, C be declared to be exclusive property of the defendant.

I have considered the submission. However, there is no force in submissions of the learned counsel for the defendant. It is not in dispute that the property A was purchased jointly in the year 1967 whereas property B and C were inherited by the plaintiff and defendant. Both the Courts have examined the settlement between the parties and it has been held that such settlements, do not partition the property. There are only settlement with respect to separation of possession only. Learned courts have further found that the parties to the litigation did not adhere to the settlements. Therefore, such settlements cannot be held to be final between the parties.

However, the learned Courts below have committed an error in

declining the relief of partition of property mentioned in Part D in the headnote of the plaint. The plaintiff had prayed that in case property mentioned in Part D in the headnote of the plaint is not found to be exclusive property, the property D be also ordered to be partitioned.

Both the Courts below as well as this Court found that property mentioned in Part D in the headnote of the plaint is not exclusive property of the plaintiff, therefore, property mentioned in Part D in the headnote of the plaint is also declared as joint property between the parties and hence the property mentioned in Part D in the headnote of the plaint is also liable to be partitioned.

In view of the above, RSA No.2783 of 2012 is partly allowed to the extent that property D shall also be partitioned between the parties whereas RSA No.1060 of 2013 is dismissed.

In view of the judgment passed in both the appeals, all miscellaneous applications filed by the respective parties including objections to the report of the Mediator are disposed of.

23.08.2017
Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**