

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

Date of Decision:30.08.2017

1. RSA No.5058 of 2012 (O&M)

Satinder Pal Bansal

..... Appellant

Versus

Bal Krishan Bansal

..... Respondent

2. RSA No.2025 of 2014 (O&M)

Satinderpal

..... Appellant

Versus

Bal Krishan

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate
for the appellant.

Mr. R.K. Gupta, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

By this common judgment, I shall be disposed of both the Regular Second Appeals i.e. RSA-5058 of 2012 and RSA-2025 of 2014 as the property in dispute in both the appeals is same.

Facts of RSA No.5058 of 2012

Satinder Pal Bansal-plaintiff is in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff had filed a suit No.342 of 28.09.2002 for declaration and

permanent injunction claiming ownership of the shop on the basis of Will dated 06.04.1988 executed by late Sh. Jagan Nath. Plaintiff had claimed that on the basis of the Will, the shop in dispute was bequeathed his favour, therefore, he is owner in possession.

On the other hand, the defendant-Bal Krishan, who is brother of the plaintiff, filed a written statement and set up a memorandum of family settlement dated 01.01.1987 duly signed by the plaintiff and defendant wherein it is recorded that by oral family settlement, shop in question and the house behind it, fell to the share of the defendant.

Learned trial Court after appreciating the evidence available on the file dismissed the suit filed by the plaintiff. First appeal preferred by the plaintiff was also dismissed.

Facts of RSA No.2025 of 2014

In RSA No.2025 of 2014, Bal Krishan has filed the suit for possession. Both the Courts have decreed the suit holding that Bal Krishan is owner as per memorandum of family settlement which is proved on the file.

Submissions

Learned counsel for the appellant in RSA No.5058 of 2012 has submitted that originally property belonged to late Sh. Jagan Nath, therefore, any memorandum of partition or family settlement between the brothers would not bind the father i.e. late Sh. Jagan Nath. He has further submitted that Sh. Jagan Nath had executed a registered Will which is proved on the file wherein late Sh. Jagan Nath had bequeathed all his property in favour of the plaintiff except the rice mill. He, therefore, submits that the findings of the Court are wrong. On the other hand, learned counsel for the respondent has submitted that memorandum of family settlement/memorandum of partition dated 01.01.1987 is proved on the file. It is duly signed by the plaintiff. Once it is

signed by the plaintiff, the plaintiff cannot be permitted to resile from the aforesaid family settlement.

Findings

I have considered the submission of the learned counsels and with their able assistance gone through the judgments passed by the Courts in both the Regular Second Appeals.

Once there was a family settlement between the parties which is duly signed, at least the plaintiff cannot permitted to resile therefrom. A reading of the Will would show that late Sh. Jagan Nath did not make a specific reference to the shop in dispute. The memorandum of family settlement was never challenged or disputed by late Sh. Jagan Nath during his life time. In these circumstances, once the family had settled the dispute with respect to the shop and the house behind it, Satinder Pal Bansal was not justified claiming the property on the basis of Will dated 06.04.1988.

Still further, Will is dated 06.04.1988. In the memorandum of family settlement dated 01.01.1987, the property in dispute including the shop and the house behind it, had been acknowledged to have fallen in share of the defendant (Bal Krishan). Late Sh. Jagan Nath had no power to execute a Will with respect to the property in dispute. A reading of the Will executed by late Sh. Jagan Nath shows that this shop and house has not been specifically mentioned. The plaintiff is claiming the shop and house only on the basis of residuary clause.

In view of the discussion made above, it is apparent that the property in dispute had fallen to the share of Bal Krishan which was duly acknowledged in the memorandum of family settlement dated 01.01.1987. Late Sh. Jagan Nath did not, therefore, include this property in his Will dated 06.04.1988. Late Sh. Jagan Nath never claimed any right in the property in

dispute during his life time. The Court below were drawing inference that the memorandum of family settlement entered into between the two brothers, signed by them, was accepted by the family.

For the reasons recorded above, I do not find any good ground to interfere with the finding arrived at by the Courts below.

Both the appeals are dismissed.

30.08.2017
pvd

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No