

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

RSA No.3843 of 2013 (O&M)
Date of Decision : 29.08.2017

Anil Kumar Sethi

..... Appellant

Versus

Romesh Kumar Sethi and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Appellant present in person.

Mr. Namit Gautam, Advocate and
Mr. Akshay Rawal, Advocate
for respondents No.1 and 2 and
LRs of respondent No.4.

Mr. Raj Karam Singh Verka, Advocate
for respondent No.3.

Mr. Rajinder Mathur, Advocate
for the respondent No.5 – HUDA.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of
the Courts below decreeing the suit filed by the respondents No.1 and 2.

The issue in dispute is House No.1843, Sector 16, Faridabad.

The parties are siblings. The house was allotted in the name of the father of
the parties Sh. Jagan Nath Sethi (since deceased) in the year 1979. The

claim of the respondents was that even though the property was allotted in the name of their father but by the time it was constructed it had acquired the characteristics of Hindu Undivided Family (HUF) property and they were all shareholders in the property. The claim of the appellant was that the property was self-acquired property of the father and was not HUF at all. He further went on to claim that by an application dated 20.12.1979 the father had moved an application to the Estate Officer, HUDA, Faridabad praying that the plot be transferred in the name of his two sons i.e. the appellant and one Narinder Kumar Sethi since they were employees and could get loan from their employer. As per the appellant this application was allowed and consequently he and his brother Narinder Kumar Sethi became the owners of the house. The case of the two respondents No.1 and 2-plaintiffs was that whatever loan was taken for the construction of the house was actually repaid by them and the entire first floor was constructed by the respondent No.2 and in fact the appellant and the other brother Narinder Kumar Sethi had accepted that the first floor would belong to the respondent No.2. It was further their case that Narinder Kumar Sethi had willed his share in the property in favour of the respondent No.2. The respondent No.2 had however clarified and is reiterated today by his counsel that he still maintains that the house was HUF property where all the siblings have a share and he does not claim any special right either on account of the fact that he constructed the first floor or on account of the fact that Narinder Kumar Sethi had willed his share in the property to him.

The matter had come up earlier also on 21.08.2017 when I had impressed upon the parties that keeping in view their close relationship they

should explore the possibility of settlement but it seems that no settlement is possible. The appellant has argued that the assertions of the respondents No.1 and 2 that the property has now partaken the character of HUF is not proved.

In my opinion, even if the property does not partake the character of HUF yet there are documents on the record which also go to prove that the property was never absolutely transferred in favour of the appellant and Narinder Kumar Sethi because the application dated 20.12.1979 clearly showed that the names of the appellant and Narinder Kumar Sethi were transposed as owners only for the purpose of loan. Moreover, by the document Ex.D2 the appellant had accepted that the respondent No.1 is building the first floor and would be the owner thereof and he and Narinder Kumar Sethi would have no objection to that. Another fact before me also is that now for the last almost forty years the appellant has resided in the property. The Courts below have held that the property was HUF and all the five siblings would be owner to the extent of 20%. Resultantly, once I have held that the material on record would not partake the character of HUF to the property in dispute this finding has to be reversed. However, the effect of the Will of Narinder Kumar Sethi and Ex. D2 also cannot be negated.

In the considered opinion of this Court, the interest of justice would be met if it is declared that the appellant would be the owner of 25% of the property and the respondents No. 1 and 2 and their sister would also be similarly owners of 25% each of the property. Ordered accordingly.

Appeal stands disposed of.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 29, 2017
ashish/anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned-Yes/No

Whether reportable-Yes/No