

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA No.4170 of 2005 (O&M)
Date of Order: 13.07.2018

Bhup Singh and others

..Appellants

Versus

Raj Singh @ Rajinder Singh and another

..Respondents

(2) COCP No.3417 of 2013 (O&M)

Bhup Singh

...Petitioner

Versus

Raj Singh @ Rajinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ramesh Hooda, Advocate,
for appellant no.1.

Mr. Mahavir Sandhu, Advocate,
for appellant nos.2 to 4

Mr. Akshay Bhan, Sr. Advocate, with
Mr. Santosh Sharma, Advocate, and
Mr. Aman Bansal, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against
the judgment passed by the learned first appellate court.

It is not disputed that the defendants-appellants Bhim Singh
(proforma respondent herein) and Bhup Singh (appellant herein) had
previously filed a suit in which they had pleaded as under:-

“That defendant has got three sons namely the plaintiffs

and Raj Singh. Due to family quarrel and everyday altercation between the sons and their mother, the defendant finally made a family settlement and the house in dispute mentioned in para no.1 above was given to the plaintiffs and the defendant along with Raj Singh his second son kept the property situated at village Bisan Bhutyan Tehsil Jhajjar jointly.”

On careful reading of the plaint, it is crystal clear that there was a dispute in the family and in order to settle, a family settlement was arrived at wherein house mentioned in paragraph 1 of the plaint, had fell to the share of the plaintiff (appellants herein) and property situated at villages Bisan and Bhutyan, Tehsil Jhajjar had fallen to the share of Balwant Singh and Raj Singh. Plaintiff filed a suit for declaration that they are owners in possession of the property situated in the aforesaid villages.

Learned trial court dismissed the suit on the ground that the aforesaid decree was only with respect to the house and there was no reference to the property situated in villages Bisan and Bhutyan.

Learned first appellate court after carefully examining the plaint filed by the defendants-appellants in the previous suit held that in a family settlement, the house situated in city Rohtak had been given to Bhim Singh (proforma respondent herein) and Bhup Singh (appellant herein) and they have no right, title or interest in the property situated in the villages.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and photocopy of the record provided by learned counsels, correctness where of is not being disputed.

Learned counsels for the appellants has submitted that the plaintiff previously also filed a suit for permanent injunction which was dismissed under Order 17 Rule 2 of the Code of Civil Procedure. They submit that since the suit filed by the plaintiff was dismissed, therefore, the claim of the plaintiff in the present suit is barred by principle of constructive resjudicata. They further submitted that the property in villages is ancestral property and, therefore, the daughters have a right in the property. It was next submitted that the daughters were not part of the family settlement, hence there could not be any family settlement in their absence.

As regards argument that the order passed in the previous suit dismissing under Order 17 Rule 2 of the Code of Civil Procedure is barred by principle of constructive resjudicata is just to be noticed and rejected.

Dismissal of the suit under Order 17 Rule 2 of the Code of Civil Procedure is for non-prosecution. There is no determination of rights of the parties. Hence, resjudicata would not be applicable. Still further, it is admitted position on the record that previous suit filed by the plaintiff was only for permanent injunction. As such the second suit filed on a different cause of action would not be barred.

Next argument of learned counsel is that the property at villages is ancestral in nature and therefore, father had no right to enter into a family settlement.

It may be noted that there was a Hindu family which resolved their dispute by entering into a family settlement, which is considered as a well recognized method of resolving the dispute between the family members. Once a family settlement had arrived at, the property which fell to the share of respective family members cannot retain the character of

ancestral property.

Next argument of learned counsel is that sisters(daughters of Balwant Singh) were not party to the family settlement. It may be noted that the daughters did file a counter claim, however, decree passed on 22.08.1983 they did not challenge the same for a period of more than 15 years.

Learned counsel for the appellants further submitted that pursuant to the decree passed on 22.08.1983, mutation of the land situated in villages was not sanctioned and therefore the decree has not been acted upon.

The argument of learned counsels for the appellants is entirely wrong because of two reasons; (i) the mutation of the land does not confer title and it is sanctioned only for updating the revenue record and for fiscal purpose. Still further Bhim Singh (proforma respondent) and Bhup Singh (appellant) who are appellants before this court had clearly pleaded that the house at Rohtak had fallen to their share. It may be noted that it is not the case of any one that settlement was only partial and entire properties of the family were not divided in the aforesaid settlement.

In view of the aforesaid, there is no good ground to interfere.

The regular second appeal is dismissed.

COCP

Counsel for the parties agree that the contempt petition is also to be disposed of in terms of the judgment passed above.

July 13, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No