

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

1. RSA No.3519 of 2012 (O&M)
Date of decision : 10.10.2018

Harbhajan Lal Saini (deceased) through his LRs ...Appellant(s)

Versus

Bachan Kaur and another ...Respondents

2. RSA No.3589 of 2012 (O&M)
Date of decision : 10.10.2018

Harbhajan Lal Saini (deceased) through his LRs ...Appellant(s)

Versus

Bachan Singh and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Sidhu, Advocate for the appellant(s).

Mr. K.S. Cheema, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

By this order, two appeals bearing RSA Nos.3519 and 3589 of 2012, shall stand disposed of.

The plaintiff-appellant is in the Regular Second Appeal against the findings of fact arrived at by both the Courts below. In fact, learned trial Court partly decreed the suit by recording a finding that the Will dated 09.06.1998 is surrounded by suspicious circumstances whereas the Appellate Court has held that the registered Will dated 09.06.1998 is proved and it is not surrounded by any suspicious circumstance.

The dispute in the present case is between the family members.

Labhu Ram was owner of the entire property. He had two sons, a daughter and a wife. The plaintiff claims the property on two following counts:-

a) On the basis of the memorandum of family settlement dated 03.06.1985.

Or in the alternative -

b) On the basis of natural succession.

On the other hand, the defendants who have also filed the counter claim which includes widow of Labhu Ram and her daughter, claimed that Labhu Ram had executed a registered Will in favour of his wife Lachmi Devi on 09.06.1998. As regards, the memorandum of family settlement dated 03.06.1985, the trial Court as well as the first Appellate Court have concurrently found that the aforesaid family settlement was not binding on widow and wife and the daughter who are not signatories. The Appellate Court has further recorded a finding that such family settlement requires registration and since it is not registered, therefore, not admissible in evidence.

Learned counsel for the appellant while reading in open Court, the memorandum of family settlement dated 03.06.1985, has submitted that the aforesaid family settlement is in fact a memorandum which is not in presenti and, therefore, not required to be registered. He further submitted that Labhu Ram when appeared in evidence in various eviction proceedings, admitted the correctness of the aforesaid memorandum of family settlement. Hence, he submitted that the family settlement has been acted upon.

On the other hand, learned counsel for the respondents has read over the statement of the appellant-Harbhajan Lal, when appeared in the

evidence. He admits that after eviction proceedings succeeded against the tenant, the shop which was got vacated by Bachan Singh had been handed over to the appellant and the appellant occupied the same and started running his business.

Learned counsel for the respondents has further drawn attention of the Court to the cross-examination of the appellant dated 19.01.2005, wherein the appellant admits that the family settlement was written so as to evict the tenant as he was posted out of the city and Bachan Singh was residing in the city. Learned counsel while referring to this statement, has submitted that had there been a final family settlement, the shops which had come to the share of Bachan Singh would not have been handed to the appellant-Harbhajan Lal after the order of eviction. Hence, he submits that the aforesaid family settlement was only for the purpose of evicting the tenant.

This Court has considered the submissions. No doubt, the settlement dated 03.06.1985 is in the form of memorandum and such memorandum of family settlement even if unregistered is admissible in evidence, however, in the present case, certain facts have come in evidence which prove that the family settlement was not with a view to divide the property of the family. There are various reasons for arriving at such conclusion:-

1. Bachan Singh, respondent herein filed a petition against the tenant-Satnam Singh. According to the memorandum of family settlement, the aforesaid two shops under tenancy of Jeewan Singh and Satnam Singh had come to the share of Bachan Singh whereas the appellant

- admits that after getting the possession, Bachan Singh handed over the possession of the aforesaid shop to Harbhajan Lal.
2. The plaintiff when appeared in evidence himself admits that the memorandum of family settlement has been arrived at for the purpose of getting the tenant evicted as he was posted out of the city.
 3. It is not disputed that Lachmi Devi, wife (widow later on) and Bachan Kaur, daughter were not signatories to the aforesaid memorandum of family settlement.
 4. Labhu Ram, when executed a registered Will dated 09.06.1998, specifically wrote in the Will that the family settlement which has been arrived at by his successors shall stands cancelled.
 5. The agricultural land as well as the shops which were owned by Labhu Ram was kept joint in between the appellant and Labhu Ram

In view of the aforesaid factors, it is apparent that even if it is held that the aforesaid memorandum of family settlement was not required to be registered, however, the aforesaid family settlement is proved to be not for the purpose of dividing the property or conferring any ownership.

Hence, there is no ground to interfere.

Both the Regular Second Appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

10.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No