

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.434 of 2013 (O&M)
Date of Decision:21.08.2018

Sukhdev Singh and others

...Appellants

Versus

Amarjit Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Sunny K.Singla, Advocate for the appellants.
Mr.I.S.Brar, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-appellants are in the regular second appeal against the judgment passed by the learned first appellate court. All the plaintiffs are either son or heirs of others sons of Late Shri Jangir Singh, a common ancestor, whereas defendants are 4th son, widow and only daughter of the same ancestor.

The plaintiffs filed a suit for declaration, claiming that plaintiff No.1 is entitled to 1/4th share of land out of 5/48th share of land measuring 290 kanals and 19 marlas and 1/4th share of the same to plaintiffs No.5 to 7 and 1/4th share to defendant No.1. The plaintiffs also challenged the validity of the transfer deed executed by Smt.Balwant Kaur-defendant No.2 in favour of her son Amarjit Singh-defendant No.1.

Late Shri Jangir Singh was common ancestor of the parties. Jangir Singh had four sons namely Sukhdev Singh, Hardev Singh (deceased), Charanjit Singh (deceased), Amarjit Singh and a daughter (Ranjit Kaur) apart from wife (Balwant Kaur). He was owner of 16½ acres

of land. On the death of Jangir Singh, there was a family settlement and accordingly land was distributed/partitioned and each son of Jangir Singh got his respective share and land measuring 30 kanals and 6 marlas fell to the share of Smt. Balwant Kaur (widow) who has died during the pendency of the present appeal. Balwant Kaur used to reside with her son Amarjit Singh-defendant No.1. She executed a registered transfer deed in favour of her son Amarjit Singh on 7.9.2006. The validity of the registered transfer-deed executed by Balwant Kaur is the main bone of contention between the parties. The registered transfer-deed/relinquishment deed is Ex.D1, execution whereof is admitted by Balwant Kaur, who was defendant No.2 in the suit. The relinquishment deed/transfer deed not only bears her thumb impressions but also bears her photograph along with the Sub Registrar as well as marginal witnesses and defendant No.1. The plaintiffs further claimed that defendant No.2 executed a Will on 17.9.2000. The plaintiffs claimed that Balwant Kaur had no right to execute this transfer deed and in fact the transfer deed was on account of undue influence exercised by her son-defendant No.1. The plaintiffs pleaded that before execution of the transfer deed in a family settlement, she had divided this entire property in favour of her sons or children of her pre-deceased sons.

Defendants contested the suit including Balwant Kaur and denied any family settlement.

The learned trial court decreed the suit by giving two following reasons:-

- (i) Defendant No.1 Amarjit Singh when appeared as DW-3 in the evidence has admitted about family settlement, therefore,

once in the family settlement, property which fell to the share of Balwant Kaur had been distributed, she had no right to execute the transfer deed.

(ii) In the genealogy, attached to the transfer deed, two sons who had already died have been wrongly shown as alive.

However, the learned first appellate court after reappreciating the evidence, reversed the judgment of the trial court and dismissed the suit filed by the plaintiffs.

In the considered opinion of this Court, following substantial questions of law arise:-

(i) Whether before a court grants a decree on the basis of admission in oral evidence, it is incumbent on the court to see that admission is categoric, specific, unequivocal, comprehensive and it does not suffer from any vagueness?

(ii) Whether a small error/mistake in the annexure attached to the registered transfer deed which has no effect on the transfer would result in invalidating the transfer deed itself?

The learned first appellate court carefully examined the alleged admission made by defendant No.1 during his oral testimony and the court found that such admission does not prove the version of the plaintiffs particularly when Balwant Kaur has categorically denied any family settlement.

In the open court, the statement of DW-3 Amarjit Singh has been read over more than once by both the learned counsels completely. No

doubt, Amarjit Singh, admitted a family settlement. However, it is not clear whether such family settlement as admitted is after the death of Jangir Singh, his father when the property was divided amongst four sons and widow excluding daughter Ranjit Kaur or it is with respect to property which fell to the share of Smt.Balwant Kaur-defendant No.2. Rather on the complete reading of the aforesaid oral testimony particularly the cross-examination, it is apparent that Amarjit Singh is only admitting the family settlement, which was arrived at after the death of Jangir Singh. He nowhere admitted that the property which fell to the share of Balwant Kaur, i.e. measuring 30 kanals and 6 marlas was also subject matter of family settlement or partition subsequently.

This Court has also got read the statement of Amarjit Singh-DW3 from the court official and on reading of the entire statement, it cannot be said that Amarjit Singh had categorically or specifically admitted any family settlement with respect to property of Balwant Kaur. In examination-in-chief, Amarjit Singh specifically denied any family settlement with respect to the property of Balwant Kaur and rather claimed exclusive ownership on the basis of transfer deed executed and registered on 7.9.2006. Although, learned counsel for the appellants has translated some portion of the statement of Amarjit Singh, i.e. cross-examination, however, on reading of the vernacular, it is apparent that there is no categoric or specific admission of Amarjit Singh with regard to division of the property by family settlement with respect to the property of Balwant Kaur.

Amarjit Singh and Balwant Kaur had jointly filed written statement, denying any family settlement with respect to the property of

Balwant Kaur. The error/mistake in the genealogy is only to the effect that on the date of execution of the transfer deed sons of Balwant Kaur who had died, were shown as alive, however, that would not make any difference because in the transfer deed all four sons have been correctly described alongwith daughter. Such mistake cannot result in invalidating a registered transfer deed, execution whereof is not being disputed by Smt.Balwant Kaur. Rather in the Court, she reiterated that she had executed the transfer deed in favour of her son Amarjit Singh.

Now the stage is set for considering the questions of law.

(i) Whether before a court grants a decree on the basis of admission in oral evidence, it is incumbent on the court to see that admission is categoric, specific, unequivocal, comprehensive and it does not suffer from any vagueness?

Section 17 of the Evidence Act, 1872 deals with the admission.

It is well settled law that before an admission in oral evidence is used against a party to the litigation, such admission has to be categoric, specific, unequivocal, comprehensive and it does not suffer from any vagueness. Once the court finds that in the cross-examination a witness has admitted the case set up by the opposite side, the court must examine the entire statement and thereafter arrive at a conclusion whether such admission is categoric and specific or not. Admission made by the party cannot be used against him unless the admission is categoric and specific. Admission must be clear, unequivocal, unambiguous and comprehensive. If an admission in oral evidence is capable of two interpretations then an interpretation unfavourable to the person making it should not be taken as his admission.

If on examination of entire statement, the court finds that such

admission suffers from any vagueness, the court would not decide the case only on the basis of such vague admission. The statement of a witness is to be read in entirety and considered as a whole. One line in the statement cannot be read in isolation/divorced from the remaining part of the statement.

Hence question No.1 is answered against the appellants.

(ii) Whether a small error/mistake in the annexure attached to the registered transfer deed which has no effect on the transfer would result in invalidating the transfer deed itself?

In the considered opinion of this Court, unless such annexure or attachment is the foundation of a registered deed and the error/mistake is such which itself results in invalidating the document, only in those circumstances, an error/mistake in the annexure can result in invalidating a registered document. An inadvertent error or mistake in the annexure having no substantive effect on the main document cannot result in invalidating the registered document.

Hence, question No.2 is also answered against the appellants.

In view therefore, there is no ground to interfere. Regular Second Appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

21.08.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No