

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

1. RSA No.588 of 2013 (O&M)
Date of decision : 01.10.2018

Baldev Singh

...Appellant

Versus

Lekh Ram

...Respondent

2. RSA No.3178 of 2014 (O&M)
Date of decision : 01.10.2018

Lekh Ram

...Appellant

Versus

Baldev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.K. Ganga, Advocate for the appellant
(In RSA No.588 of 2013)
for the respondent (In RSA No.3178 of 2014)

Mr. P.S. Jammu, Advocate for the appellant
(In RSA No.3178 of 2014)
for the respondent (In RSA No.588 of 2013)

ANIL KSHETARPAL, J. (ORAL)

By this judgment, two appeals bearing RSA Nos.588 of 2013
and 3178 of 2014, one filed by the son and other filed by the father shall
stand disposed of.

It is sad that father and son are litigating in the Courts rather than resolving their disputes in the family. Although, effort has been made by this Court also by referring the matter to the Mediation and Conciliation Centre of this Court but the parties failed to resolve their disputes. Hence, this Court is left with no choice but to decide the appeals.

RSA No.588 of 2013, has been filed by the son-Baldev Singh against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff claimed that in a family settlement, which was acknowledged in a judgment and decree dated 03.02.1982, the plaintiff apart from share in the agricultural land, a house had also fallen to his share.

The father-defendant contested the suit and pleaded that as per the family settlement, only share in the land measuring 17 kanals and 3 marlas had come to the share of the appellant-plaintiff and no part of the house was ever given. The defendant further took a stand that the plaintiff has sold major chunk of agricultural land which had fallen to his share.

Learned trial Court, after recording a finding that as per the family settlement which was acknowledged vide judgment and decree dated 03.02.1982, no part of the house had come to the share of the plaintiff, dismissed the suit on the ground that the house has not been partitioned. However, learned first Appellate Court after re-appreciating the evidence has recorded a finding of fact that since in the family settlement, no part of the house had come to the share of the plaintiff, therefore, he has no right to stay in the portion of the house which is exclusively owned by father-Lekh Ram.

It may be noted that other appeal is arising out from a suit for

mandatory injunction filed by father seeking delivering of possession on the ground that licence in favour of son has also been terminated.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgment passed by both the Courts below and the record.

Learned counsel for the son-appellant vehemently argued that the appellant has not sold his entire share in the property and, therefore, the appellant is entitled to retain the possession of the house and the constructed shops. He submitted that since the plaintiff-son is owner to the extent of certain portion of the property and he is not in possession of any excess share, therefore, suit could not be decreed.

On the other hand, learned counsel for the father-respondent in RSA No.588 of 2013 has pointed out that the plaintiff has failed to show or prove that house in question or the shops were ever constructed by the plaintiff. He submitted that father had permitted the son to continue reside in the house which was constructed. Since, the relationship between the parties had gone sour, therefore, father is not willing to allow the son to continue reside in the same house. He further submitted that the licence in favour of the son has already been terminated.

On being asked, learned counsel for son-appellant in RSA No.588 of 2013 frankly admitted that no evidence has been led by the plaintiff-son to prove that construction of the portion of the house and the shops in which he is in possession, was got done by him. It is also undisputed that in a family settlement which was acknowledged by judgment and decree dated 03.02.1982, no part of the house or shops had

come to the share of the plaintiff-son. In such a situation, the learned First Appellate Court was correct while recording a finding that the plaintiff has no right to continue in possession of the property.

Learned counsel for the son-plaintiff/appellant has submitted while drawing attention of the Court to the statement of DW1 that possession of the plaintiff is admitted. However, the possession of the plaintiff is never in dispute. This is the reason why father has filed a separate suit which is for mandatory injunction and subject matter of RSA No.3178 of 2014.

Since the relationship between the father and the son could not be reconciled, although, sincere effort was made, therefore, it would not be in the interest of justice to allow son to continue to reside in the house which belongs to the father.

In view thereof, RSA No.588 of 2013 is dismissed. Consequently, RSA No.3178 of 2014 shall stand allowed.

It may be noted that as per the latest judgment of Constitution Bench reported as **Pankajakshi (Dead) through LRs. Vs. Chandrika and others, 2016(6) SCC 157**, second appeals in this Court are governed or filed under Section 41 of the Punjab Courts Act and, therefore, framing of the substantial questions of law is not necessary.

01.10.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**