

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

RSA No.150 of 2017 (O & M)
Date of Decision:23.08.2018

Deepak Kumar

...Appellant

Versus

Surjan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitin Jain, Advocate
for the appellant.

Mr. Aayush Gupta, Advocate
for respondent No.1.

Mr. Sanjeev Gupta, Advocate
for respondents No.3 to 5.

ANIL KSHETARPAL, J.

CM-12432-C-2018

Application stands disposed of after noting that Surjan Singh has died on 22.04.2017 and his all Class I heirs are already party in the litigation.

Main Case

Plaintiff No.1-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiffs, mother and son, filed a suit for declaration claiming that as per agreement as well as family settlement dated 02.05.2005, plaintiffs are in possession of the property as the aforesaid family settlement is valid and binding and, therefore, the defendants be restrained from interfering in their possession. In fact, all the parties to this unfortunate litigation are members of one family. Surjan Singh is father whereas Prem

Lata is his wife. Plaintiff No.1 and defendant No.2 are his two sons whereas defendants No.3 and 4 are his daughters.

Defendant No.1 contested the suit and pleaded that no deed of family settlement was executed or attested by the notary and rather the aforesaid agreement is illegal, null and void. It was pleaded that on account of mutual understanding, plaintiff No.1 was allowed to occupy two rooms, one kitchen, one toilet and one shop, whereas defendant No.2 was given permissive possession of one room, one store with kitchen, bathroom and one shop. One room and one store was kept by defendant No.1 to live with plaintiff No.2. It was further pleaded that plaintiff No.1 in connivance with plaintiff No.2 occupied the room and the store, which was kept by defendant No.1 to live with his wife as plaintiff No.2. His wife deserted defendant No.1. Defendant also filed a counter claim for seeking possession.

Both the Courts after appreciating the evidence available on the file dismissed the suit filed by the plaintiffs whereas the counter claim filed by defendant No.1 was decreed. It may be noticed that defendant No.1 has died on 22.04.2017.

Learned counsel for the appellant while referring to the written statement filed by defendant No.1 submitted that defendant No.1 has pleaded an oral family settlement. He submitted that even if the written family settlement dated 02.05.2005, is not admissible in evidence still in view of the pleadings, existence of the family settlement is proved. Hence, he submitted that the judgments passed by the Courts below are erroneous.

On the other hand, learned counsel for the respondents while drawing attention of the Court to the alleged family settlement, which has been filed as Annexure A-2, has submitted that aforesaid family settlement

is in 'presenti' and any document which is dealing with the immovable property worth more than Rs.100/- and creating any right, title or interest in the immovable property at present is required to be compulsory registrable under Section 17 of the Registration Act, 1908. Hence, he submitted that Courts below have rightly dismissed the suit and decreed the counter claim.

As regard argument of learned counsel for the appellant qua oral settlement as pleaded by defendant No.1, learned counsel for the respondents pointed out that no evidence has been led. Both the Courts have found that the settlement between the parties was dated 02.05.2005, which was in 'presenti' and since it was not registered, therefore, not admissible in evidence.

This Court has analyze the argument of learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below and the alleged agreement as well as alleged family settlement, which has been placed on file as Annexure A-1 and Annexure A-2.

It is apparent that through the aforesaid documents, properties are being assigned to the respective members of the family. The aforesaid document creates/declares right in the immovable property worth more than Rs.100/- and hence, it was required to be registered before such document is held admissible.

Still further, on careful reading of the aforesaid settlement, it is apparent that defendant No.1 had written in the aforesaid family settlement that he shall remain owner of the property during his life time and the possession of some part of the property was being given to the respective family members. Hence, it is apparent that through aforesaid family

settlement only possession was given so as to maintain peace and harmony in the family without any intention to confer ownership rights. Sh. Balkar Singh, who appeared on behalf of the plaintiff has also admitted, being attesting witness of Ex.P-1 and Ex.P-2, that Surjan Singh had only given possession of the different portions of house No.1371 but he did not confer ownership upon the sons.

Argument of learned counsel for the appellant that the aforesaid family settlement is recording a past transaction and, therefore, memorandum of family settlement is also without any substance because the aforesaid family settlement has been reduced into writing in 'presenti' and it cannot be inferred from that the aforesaid family settlement is in the form of a memorandum.

No doubt, Courts are always lean in favour of upholding the family settlement, however, the Court cannot overlook the statutory bar.

Hon'ble Supreme Court while dealing with the compromise decree in the case of **“Bhoop Singh vs. Ram Singh Major and others”** (1995) 5 SCC 709 have held that if a compromise decree is declaring a pre-existing right and does not create any right, title or interest in 'presenti' in immovable property worth Rs.100/- only then such compromise decree does not require registration. However, if the compromise/family settlement is creating right, title or interest by document itself then it requires compulsory registration. Para 17 of the judgment is extracted as under:-

“It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having

right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs.100 or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable.”

In view thereof, there is no ground to interfere.

Regular second appeal is dismissed.

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

23.08.2018

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(ANIL KSHETARPAL)

JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No