

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4265 of 2017 (O&M)

Date of Decision: April 25, 2018

Ishwar Devi (since deceased) through L.Rs & others

...Appellants

Versus

Khan Chand (since deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.M.S.Kathuria, Advocate for
Mr.Rakesh Nehra, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

CM No.11083-C of 2017

Prayer in the application is for impleading the L.Rs of Ishwar Devi-appellant No.1, who is stated to have died on 21.5.2013. The application is supported by an affidavit.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions and the persons mentioned in Para No.2 of the application are allowed to be impleaded as L.Rs of appellant No.1 for the purpose of prosecuting this appeal only.

CM No.11084-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 148 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.4265 of 2017

Appellant-plaintiffs are in Regular Second Appeal against the

concurrent findings of facts, whereby the suit claiming declaration and mandatory injunction challenging the sale deeds dated 13.10.1999 and power of attorney No.3 dated 2.4.1999 to be illegal, null & void, has been dismissed.

It was alleged that Khan Chand was the owner of agricultural land comprised in Khewat No.89, Khatoni No.92 and Killa No.32/9/2 (3-8), 10 (8-0), 11 (8-0), 12 (8-0), 13/2 (1-8), total measuring 28 kanals 16 marlas and Khewat No.193 min, Khatoni No.200, Rect.& Killa No.31/15 (4-1), 32/8/1 (6-4), 8/2 (1-16), 9/1 (4-12), total measuring 16 kanals 13 marlas, situated at Village Guga Heri, Tehsil Meham, District Rohtak. He was also owner of the shop of area 37 sq.yards. Defendants No.3 and 4, i.e., Kashmiri Lal and Subhash Chander claimed themselves to be owners in possession of the suit property. The challenge was laid to the aforementioned sale deeds on the premise that plaintiffs along with Smt.Chanchal had filed a suit seeking decree of permanent injunction against Khan Chand. The aforementioned suit was dismissed vide judgment dated 26.2.1996. However, in Appeal No.98 of 1996, vide order dated 20.2.1997, a settlement was arrived at between the parties, wherein Khan Chand had undertaken not to alienate his properties except in case of necessity. The alienation in violation of the aforementioned family settlement was not binding on the rights of the plaintiffs, though plaintiffs No.2 and 3 had a right in the property by birth. Defendant No.1 was requested to treat the impugned sale deeds and power of attorney as null and void, but he did not pay any heed. A civil suit was filed in 1999, which was dismissed on 24.9.2008. However, in appeal, which was decided on 3.1.2009, liberty was granted to the plaintiffs to file the suit afresh. It is in that background of the

matter, the suit aforementioned was filed in 2009.

Two sets of written statements were filed. The defendants contested the suit on the premise that defendant No.2, in whose favour the power of attorney was executed by Khan Chand, was none else but the daughter. The sale deeds and the power of attorney are registered documents and have not been cancelled. It was the property of Khan Chand, who could deal with the same in any manner he wanted. The plaintiffs had not been able to prove the possession of the suit property.

Since the parties were at variance, the trial Court framed as many as seven issues including relief, which read thus:-

- 1) Whether the Mukhtiarnama/power of attorney dated 2.4.1999 along with sale deeds No.877 and 879 dated 13.10.1999 (both) along with subsequent mutation if any are illegal, null and void and not binding on the rights of the plaintiffs as alleged? OPP*
- 2) If the above issue is proved in affirmative, whether the plaintiffs are entitled for a decree of relief of permanent injunction as prayed? OPD*
- 3) Whether the present suit is not maintainable? OPD*
- 4) Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD*
- 5) Whether the plaintiffs have not come to the court with clean hands? OPD*
- 6) Whether the plaintiffs have not paid proper advalorem court fee? OPD*
- 7) Relief.*

The appellant-plaintiffs brought on record documents Ex.P1, Ex.PX and Ex.PY, Ex.PA, Ex.PB, Ex.PW4/A and examined as many as four witnesses, whereas the defendants examined three witnesses and brought on record revenue record, i.e., Ex.D1 to Ex.D7.

The trial Court, on the basis of the aforementioned evidence, held that there was no violation of the alleged settlement Ex.PA and dismissed the suit. Appeal laid before the Lower Appellate Court also met with the same fate.

Mr.M.S.Kathuria, Advocate for Mr.Rakesh Nehra, learned counsel for the appellants submitted that both the Courts below abdicated in not reading the contents of the settlement, which put a clear bar on Khan Chand not to sell properties except for necessity. The aforementioned order dated 20.2.1997 passed in Appeal No.98 of 1996 titled as “Ishwar Devi, Mahesh Chander and Vinod Kumar Versus Khan Chand” was read out in the Court, but there is an abdication and, therefore, the sale deeds were liable to be set-aside and there was no medical emergency for treatment of Khan Chand as there was sufficient cash in the hands of the family to look after him. No occasion arose for selling the land. The previous suit was dismissed and liberty was granted to file a fresh suit. It is in that background of the matter, the suit was filed, therefore, rigors of the Limitation Act cannot be pressed into service and, thus, urged this Court for setting-aside the concurrent findings by allowing the appeal.

The appeal is accompanied by an application seeking condonation of delay of 142 days in filing the appeal and the reason given is that the appellants could not arrange the money.

I have heard the learned counsel for the appellants and appraised the paper book.

The reasons given in the application seeking condonation of delay are bereft of the reasonable explanation. Such a plea cannot be taken for seeking condonation of delay. Accordingly, the application is dismissed.

On merits, the appellants have not been able to prove with regard to the breach of the agreement. The family settlement reads as under:-

“Joint statement of S/Shri Krishan Chander, Mahesh Chander, Vinod Kumar sons of Khan Chand on oath and statement of Khan Chand s/o Shri Gopi Chand and Smt.Ishwar Devi w/o Khan Chand on oath.

Stated that there were minor family differences. We have settled the differences amongst ourselves. Now there are no differences. We have agreed that both the parents Smt.and Shri Khan Chand shall be residing together. Initially both the parents would reside together at H.No.133/4, Shivaji Colony, Rohtak. The younger brother Vinod Kumar would also come and reside in the same house. Eldest brother Sh.Krishan Chander is already residing in that house. The other brother Mahesh Chander would be residing at Gugaheri. All the requirements and expenses on treatment as well as the other expenses of the parents shall be borne by all the three brothers equally and if need be and if there is not enough cash for the treatment of the father, then some property would be sold by the father with the help of the three brothers. Otherwise, all the five shall be enjoying the property together of the family property and no property would be wasted by anyone. In the light of this agreement appeal be decided, as withdrawn and suit be dismissed as withdrawn.

RO&AC

20.2.1997

Addl.District Judge,

Rohtak.”

From the perusal of the aforementioned family settlement Ex.PA, it was only with regard to emergency and treatment of Khan Chand. There was no expressed bar for selling of the property, but was only that the property would not be wasted. It was incumbent upon the appellant-plaintiffs to produce on record sufficient piece of evidence to establish that

there was sufficient cash available for taking care of Khan Chand and, therefore, there was no necessity. The appellants failed to discharge the onus as per Section 101 of the Evidence Act. The suit was liable to be dismissed and rightly so, was dismissed.

Both the sale deeds Ex.PX and Ex.PY reflected that the vendor handed over the possession to the vendee. Ex.D1 jamabandi for the year 2008-2009 and Ex.D2 to Ex.D7, khasra girdawaries also proved the possession of the defendants. The appellants failed to rebut documents Ex.D1 to Ex.D7 and, therefore, the revenue record carries presumption of truth as per Section 44 of the Punjab Land Revenue Act.

The reasons given in the application seeking condonation of delay would not suffice the requirement of law. The argument of Mr.Kathuria has not been able to bring the case within the realm of necessity.

For the reasons stated above, I do not find any illegality or perversity in the concurrent findings. No ground for interference is made out. Resultantly, the appeal is dismissed.

April 25, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No