

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

CM No. 9407 C of 2019 in/and
RSA No. 3475 of 2019 (O&M)
Date of decision: November 8, 2019

Abhay Tandon

...Appellant

Versus

Manju Tandon

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Ms. Nivedita Sharma, Advocate,
Ms. Alka Dahar, Advocate and
Mr. Sunil Singh, Advocate,
for the appellant.

Mr. Nitin Kant Setia, Advocate,
for the respondent.

JAISHREE THAKUR, J.

CM No. 9407 C of 2019

This is an application that has been filed under Order 41 Rule 27 read with Section 107 and 151 of the Code of Civil Procedure for leading additional evidence by way of placing on record the Compromise Deed, Transfer Deed and a letter prepared by the plaintiff/respondent showing their intent to settle the dispute between the parties qua the properties as Annexure AE1 to AE3 respectively.

Since the documents are not disputed, the application is allowed and the documents are allowed to be taken on record.

CM stands disposed of.

Main case.

1. The instant Regular Second Appeal has been filed seeking to challenge the judgment and decree dated 1.8.2018 passed by the Civil Judge (Junior Division), Gurugram, decreeing the suit of the plaintiff/respondent for possession and recovery of arrears of rent and damages, which was subsequently affirmed by the District Judge, Gurugram by his judgment and decree dated 18.5.2019.

2. In brief, the facts are that the plaintiff/respondent herein (henceforth called as '**the respondent**') filed a suit against the defendant/appellant herein (henceforth called as '**the appellant**') for possession, recovery of arrears of rent and mesne profit. In the suit, it was averred that the suit property had been initially allotted in the name of the respondent's husband, namely Shri Ravi Shanker Tandon vide allotment letter and physical possession of the suit property had been handed over on 1.10.2002. Shri Ravi Shanker expired on 30.9.2003. The respondent had been named as a nominee and on his death the two sons of the respondent, namely Amit Tandon and Abhay Tandon—defendant, had voluntarily given NOC/affidavit on the stamp paper for transfer of the suit property in the name of their mother, namely Manju Tandon—respondent. On the basis of the NOC, conveyance deed dated 2.2.2011 was executed by the Society in favour of the respondent and the same was registered before the office of the Sub Registrar, Gurugram. The respondent, along with her two sons were residing over the suit property and continued to reside together till such time a dispute arose within the family. The elder son of the respondent, namely Amit Tandon got a job in Indore and started residing there and the respondent on account of the dispute with her younger son, namely Abhay

Tandon—appellant started residing with her elder son. When the respondent asked the appellant and his wife to vacate the suit property, the appellant requested his mother to allow the utilization of one bedroom and common area of the suit property till he finds a suitable accommodation and it was decided that a sum of ₹4,000/- would be paid as licence fee for utilization of the accommodation. However, the appellant started using rest of the suit property without consent of the respondent and also did not allow her to enter the premises. Subsequently, a family settlement was arrived at on 7.5.2011 and in terms of the settlement, it was agreed that the suit property shall be sold for the highest price within a period of six months to a prospective buyer. The suit property could not be sold as the appellant did not allow the respondent to enter the suit property. Eventually, the respondent served a legal notice dated 1.9.2012 on the appellant and terminated the licence of the appellant. A demand of ₹2,31,693/- was also raised for utilization of the suit property w.e.f. February 2010 till July 2013 with interest. As the appellant refused to make the payment or vacate the suit property, the respondent had no option but to file the suit.

3. On notice, the appellant—defendant appeared raising the plea of maintainability. It was averred that there was no relationship of landlord and tenant as alleged by the respondent, while further contending that the property was a HUF property purchased by Shri Ravi Shanker Tandon and the defendant being one of the legal heirs was entitled to a share in the same. It was submitted that the suit property had never been given on a monthly licence fee as alleged in the plaint, while further arguing that as per the settlement, the property was to be sold and out of the sale proceeds, the

respondent was entitled to receive a sum of ₹15 lacs and the remaining amount was to be disbursed between the appellant and his elder brother—Amit Tandon in equal share. It was denied that the appellant was liable to pay any arrears of rent or mesne profits as claimed.

4. On completion of the pleadings, the following issues were framed:-

- “1. *Whether the plaintiff is the owner of suit property bearing flat no. 706 plot No. GH31, Siddhartha Society Sector 56, Gurgaon? OPP*
2. *Whether the defendant was a licensee under the plaintiff in respect of suit premises? OPP*
3. *Whether the licence of the defendant was terminated by the plaintiff through the notice dated 01.09.2012, if so, its effects? OPP*
4. *Whether the plaintiff is entitled to a decree for recovery of possession of suit property against the defendant? OPP*
5. *Whether the plaintiff is entitled to a decree for recovery of rent, if so at what rate and for what period? OPP*
6. *Whether the defendant is owner of suit property? OPD*
7. *Whether the suit is bad for non joinder of necessary parties? OPD*
8. *Whether the plaintiff is entitled to a decree of damages, mesne profits, if so, at what rate and for what period? OPP*
9. *Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPD*
10. *Relief.*

5. The respondent examined herself as PW3 and also examined

Nand Lal as PW1, Bhupender ARC as PW2 and Amit Tandon as PW4 and

tendered in evidence as many as 14 documents Ex. PW1/A to Ex. PW3/10. On the other hand, the appellant examined himself as DW1 and Amrinder Singh as DW2 and also tendered in evidence documents DW1/1 and DW1/2.

6. The trial Court, on appreciation of the evidence, decided issues No. 1 to 4, 5 and 8 in favour of the respondent. It was held that the property in dispute belonged to the respondent and that the settlement as relied upon would not create any substantive right or title in favour of the appellant. The appellant herein was held to be a licensee, which licence stood terminated by the issuance of the legal notice by the respondent. It was further held that the appellant had admitted that he had been paying ₹4,000/- per month to his elder brother, namely Amit Tandon and the same was being deposited directly in his bank account and, therefore, it was concluded that the appellant had been paying the said amount on account of use and occupation charges of the suit property. The Trial Court decreed the suit and ordered the appellant herein to hand over and vacate the peaceful possession of the suit property to the respondent within a period of two months and also to pay arrears of licence fee at the rate of ₹4,000/- per month from February 2010 till date of its realization along with interest @ 12% per annum. The appeal filed against the said judgment and decree was dismissed, which has resulted in the instant Regular Second Appeal.

7. Learned counsel appearing on behalf of the appellant herein would contend that there is nothing on the record to establish the fact that the appellant was a licensee in the suit property and, therefore, both the courts below have erred in directing the appellant to deposit the arrears of

licence fee at the rate of ₹4,000/- per month. It is argued that the father of the appellant passed away without leaving any Will and it is only on the basis of the NOC/affidavit sworn by the appellant and his younger brother that the suit property was transferred in the name of the respondent. It was argued that the NOC had been given in good faith and, therefore, the respondent could not be held to be the sole owner of the suit property. It is further argued that the Family Settlement dated 7.5.2011 has totally been ignored on the ground that the same is not a registered document. In fact, it is urged that the Supreme Court in case titled as **Thulasidhara & another Vs. Narayanappa & others 2019 SCC Online SC 645** has held that without registration a written document of family settlement/family arrangement can be used as corroborative evidence as explaining the arrangement made thereunder. It is also argued that the lower Appellate Court has erred in dismissing the application for additional evidence which had been filed to apprise the court about the compromise initiated by the respective parties through their counsel. It is also argued that the settlement arrived at between the parties should be adhered to.

8. Per contra, learned counsel appearing for the respondent herein contends that all the arguments as raised by the learned counsel for the appellant have already been dealt with by both the courts below. It is argued that the appellant herein has failed to apprise that the appellant, namely Abhay Tandon had filed a suit for declaration and permanent injunction restraining the respondent—Manju Tandon and Amit Tandon from interfering in the possession of the plaintiff—Abhey Tandon, which was dismissed by the Civil Judge (Junior Division), Gurgaon. In the suit that

was filed, a plea was taken that the suit property had been purchased from the HUF account and, therefore, the suit property ought to have devolved upon the three legal heirs of late Ravi Shanker Tandon. The Civil Judge (Junior Division), Gurugram, on appreciation of the evidence, held that Smt. Manju Tandon—respondent herein is the sole owner of the property and the appellant would have no right over the said property, but the respondent and Amit Tandon were restrained from dispossessing the appellant other than under due 'process of law'. It is thereafter that the instant suit for possession was filed. It is also contended that in the civil suit filed by Abhay Tandon seeking declaration and permanent injunction against his mother and brother, he had sought to rely upon the Family Settlement, which was ignored by the Civil Judge as the appellant had failed to examine any of the witnesses to it.

9. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case as well as the impugned judgments.

10. Admittedly, the suit property was initially owned by Shri Ravi Shanker Tandon, who had nominated Manju Tandon as a nominee. On the death of Shri Ravi Shanker Tandon (who died intestate), both boys, namely Abhey Tandon—Appellant and his elder brother Amit Tandon gave their NOC for the property to be transferred in the name of their mother—respondent herein. Thereafter, the property stood transferred by the Society in the name of Smt. Manju Tandon—respondent and the property stood registered in her name. In the civil suit filed by the appellant herein for declaration and permanent injunction against his brother—Amit Tandon and

mother—respondent herein, the trial Court had framed an issue as to whether the plaintiff—appellant herein is entitled to a decree of permanent injunction directing the defendant—respondent herein and her son not to sell/transfer or dispose of the suit property in any manner and whether the appellant would be entitled to a decree of declaration that Flat No. 706, Plot No. GH-31, Siddharth CGHS, Sector 56, near Kndriya Vihar Gurgaon is a HUF property in the hands of the respondent—appellant herein. The trial Court, on appreciation of the evidence, held that the property in dispute, which is the subject matter of the instant proceedings, had been purchased by the deceased Ravi Shanker Tandon and it was held to be his self acquired property. The appellant in those proceedings had failed to bring on record any transaction to establish that the property had been purchased from the HUF account. Therefore, it was held that Manju Tandon is the sole owner of the property in dispute and the plaintiff—appellant herein has no right over the same. It was further held that Smt. Manju Tandon could not be restrained from selling/transferring or alienating the suit property. This order had attained finality. Therefore, the argument that has been raised by the learned counsel for the appellant that the property initially belonged to late Shri Ravi Shanker Tandon and since he died intestate, the appellant being one of his legal heirs would be entitled to a share in the property, is not sustainable. The Civil Court in the proceedings initiated by the appellant has already given a finding that the property is not a HUF property and that Smt. Manju Tandon—respondent is the sole owner of the same and the same finding has attained finality.

11. Learned counsel appearing on behalf of the appellant has also

raised an argument that there is a Settlement Deed on the record, which ought to have been adhered to. Great emphasis has been laid on the said Settlement Deed dated 7.5.2011, wherein it had been decided that respondent—Manju Tandon would keep her articles in her room and would put lock in her room whenever she goes outside. Amit Tandon would put his lock in his room for use of the same and Abhay Tandon would put his lock in his room for use of the same as per his desire. Common portion would be opened and everyone would use the said portion. The said flat was to be sold and both the sons would be given ₹7.05 lakhs each out of the sale proceeds and a total amount of ₹15 lakhs would be given to Manju Tandon, while further agreeing that the pension that was being received by Manju Tandon would be used by her as per her wishes. The said Settlement Deed had fixed a period of six months for the sale of the above said property. It is argued that the courts below have erred in discarding the settlement on the ground that the same does not create any substantive right or title in favour of the appellant herein. A reading of the Settlement Deed would reflect that there is an agreement interse the parties regarding utilization of the suit property, wherein each of the three members of the family would use a room each. The basic decision that had been taken in the Family Settlement was that the property would be put to sale out of which an amount of ₹7.05 lakhs each would be given to both the sons and an amount of ₹15 lakhs would be paid to their mother—respondent, while fixing a period of six months for the same purpose. The Family Settlement does not create any right, title or interest of the appellant herein in the suit property. It is only an interse arrangement to put the property to sale within

a period of six months and disburse the sale proceeds in terms thereof. The appellant could have agitated upon the Family Settlement only if the said property had been put to sale as provided in the settlement. Once in an earlier civil suit filed by the appellant, the Civil Judge, Gurugram, had already held that Manju Tandon is the sole owner of the property and would be entitled to possession through the court of law, the instant suit for possession is maintainable. Even in the earlier proceedings, the appellant herein had claimed possession and permanent injunction by relying upon the Family Settlement, which was discarded, as no witness to the Family Settlement had been examined to prove the same. It is also worthwhile to note that apart from not proving the Family Settlement in the earlier suit filed by the appellant, he has not even produced any of the attesting witnesses in the present suit as well.

12. The judgment as relied upon by the learned counsel for the appellant in **Thulasidhara's case (supra)** would not be applicable to the facts of the present case. In that case, the plaintiffs—Narayanappa had filed a suit praying for a decree in his favour to the extent that he be declared as owner of the suit property as mentioned in the plaint and also for permanent injunction restraining the defendants from with his peaceful possession. It was his case that he had become owner of the suit property under a registered sale deed and, therefore, the defendants had no right to interfere in his peaceful possession. The suit was contested by the defendants stating that the suit was purchased under a registered sale deed for consideration. The trial Court held that the Ex. D.4 (a partition deed dated 23.4.1971) is admissible in evidence and dismissed the suit. The first Appellate Court on

appeal affirmed the judgment of the trial Court. However, the High Court reversed the findings of both the courts below and decreed the suit of the plaintiff. On further appeal, the Hon'ble Supreme Court held that even a unregistered document of family settlement would operate as estoppel against the parties to such settlement and it can be used as corroborative evidence as explaining arrangement made thereunder and the conduct of the parties. There is no dispute with the law laid down by the Hon'ble Supreme Court that a unregistered doc document of family settlement can be looked into for the corroborative evidence, However, the said judgment is distinguishable in the peculiar facts and circumstances of the present case. In the instant case, the Family Settlement that is sought to be relied upon was not proved either in the earlier suit filed by the appellant filed against his mother and brother, wherein the trial Court had held that the respondent herein is the sole owner of the suit property and the appellant had no right whatsoever over the same. It was also held that the respondent cannot be restrained from selling/transferring/alienating the suit property. That judgment and decree dated 14.1.2016 had attained finality as it was never challenged in appeal. So much so even the alleged Family Settlement has not been proved in the instant suit as none of the attesting witnesses were examined. Under the circumstances, both the courts below have held that the said Family Settlement did not create any right, title or interest in favour of the appellant and at best could have been used for collateral purpose to claim ₹7.05 lakhs in case the suit property had been sold. Thus, the Family Settlement under no circumstances allows the appellant to retain the possession of the property in perpetuity, therefore, the suit for possession

has rightly been decreed. Thus, in the opinion of the court, there is no infirmity with the impugned judgments of both the courts below directing the appellant to hand over the vacant possession to the respondent.

13. However, so far as licence fee is concerned, it is an admitted fact that the appellant was permitted to reside in one room and one bath room and utilise the common area of the suit property. However, when the terms and conditions of the alleged Family Settlement did not materialize, the respondent issued a legal notice dated 1.9.2012 to the appellant asking him to vacate the room in his occupation and on his failure to do so it can be said that he was in unauthorized occupation of the same. The appellant herein has denied that he was paying any licence fee or rent for the use and occupation of the said premises, while admitting that he was remitting a sum of ₹4,000/- to the account of his brother towards the expenses of medicines and other basic necessities of his mother, who was living with his brother, and stopped making payment when the relationship between him and his mother became strained. In the present situation, the appellant herein cannot be said to be a tenant, however, he definitely will be held to be in unauthorized occupation of the premises and therefore, he cannot be absolved from paying mesne profits/damages for the use and occupation of the premises after issuance of legal notice dated 1.9.2012. The Family Settlement, as relied upon would have no bearing since it pertained to putting the property to sale within a period of six months and distribution of the sale proceeds thereafter amongst the parties and it did not give a right to the appellant to stay in the premises perpetually. If the premises are to be used, the respondent herein would be entitled to claim damages/mesne

profits. It is settled law that where the house is self acquired house of the parents, son whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents upto the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout his life. In the instant case, the respondent has already been held to be absolute owner of the flat in dispute and, therefore, this Court is of the opinion that the respondent would be entitled to claim damages/mesne profits at the rate of ₹4,000/- per month from the time the legal notice was served upon him i.e. 1.9.2012.

14. The documents sought to be produced on the record by way of an application under Order 41 Rule 27 read with Sections 107 and 151 of the Code of Civil Procedure would have no bearing on the instant case, since they are the compromise deed relied upon and the transfer letter reflecting the transfer of the suit property in favour of the respondent.

15. The appeal stands disposed of on the above terms.

November 8, 2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No