

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.975 of 2015 (O&M)

Date of Order:31.01.2019

Wg. Cdr. Gursharan Singh Uberoi

..Appellant

Versus

Jagmohan Singh Uberoi (since deceased) through  
his LRs.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.S.Sidhu, Sr. Advocate, with  
Mr. Dushyant Sarvesh, Advocate,  
for the appellant.

Mr. J.C.Batra, Advocate  
for the respondents.

ANIL KSHETARPAL, J (Oral)

It is an unfortunate dispute between the family members who are educated, spending time and money in the courts rather than resolving their dispute in between themselves.

Undisputed facts are that father of the parties, namely, Late Sh. Amar Singh Uberoi had constructed this 2 kanal house (1000 sq. yards) which fell to share to his two sons, namely Jagmohan Singh Uberoi, the plaintiff and Gursharan Singh Uberoi, the defendant. Both the parties entered into a family settlement to resolve their disputes. In the family settlement, correctness whereof is not disputed between the parties, Gursharan Singh Uberoi is referred to as Party No.1, whereas Jagmohan Singh Uberoi is referred to as Party No.2. Relevant clause of the family settlement is as under:-

*“AND WHEREAS Ground Floor except the rear lawns of  
the Property is in the exclusive use and occupation of the*

*SECOND PARTY while the portion of the First Floor and the Open Terrace thereof and the rear lawns on the Ground Floor are in the exclusive use and occupation of the FIRST PARTY.”*

*“1.That the entire First Floor along with the terrace and the roof rights AND the rectangular piece of rear lawn (measuring approximately 66'x35') between the rear boundary wall and up to 3 feet straight passage from the rear wall of the house on the western side; the 8 feet wide concrete passage on the southern side of the house on the ground floor and the terrace on the top floor of the house (better described in the map in RED colour) is/and shall remain in the exclusive use/occupation/possession with all its inherent rights/title within the FIRST PARTY.”*

Jagmohan Singh Uberoi who is stated to have died had filed a suit for mandatory injunction directing the defendant to demolish the iron gate adjoining to the lawn on the rear portion of the house. He also prayed for a decree for mandatory injunction directing the defendant to open the lock of the staircase which goes into first floor.

Both the courts have granted injunction to the plaintiff to continue using Hut, which is located in the rear lawn and to open the lock of the door of the staircase opening towards lobby of first floor.

Learned counsel for the respondent has submitted that at the time of family settlement, there was a temporary Hut where his client, namely, Jagmohan Singh Uberoi i.e. second party had kept a maid servant

which was permitted to be used but this fact is denied by the appellant, namely Gursharan Singh Uberoi.

Once the parties have entered into a family settlement, correctness whereof is not in dispute, the parties are expected to abide by the same unless it is established that there is any revised family settlement. There is no evidence to that effect. In such circumstances, plaintiff-respondent has no right to use any portion of the rear lawn on the ground floor of the premises. Plaintiff has the right to use the building on the ground floor as well as front lawn.

It is not in dispute that without opening the lock of the door which opens towards lobby of the first floor, plaintiff-respondent has an access to go to roof of the first floor to repair and attend to other maintenance etc. of water tanks etc.. Plaintiff-respondent cannot claim as a matter of right he should only have access through the lobby which opens in the first floor. The first floor exclusively belongs to the defendant-appellant as per the settlement.

Learned counsel for the defendant-appellant has stated that the plaintiff-respondent or his legal heirs can go to the roof of first floor for maintenance and there shall be no obstruction from outside.

In view thereof, the judgments passed by the courts below are reversed. The regular second appeal is allowed.

The application for additional evidence is dismissed as not pressed.

**January 31, 2019**  
**nt**

**(ANIL KSHETARPAL)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

: Yes/No  
: Yes/No