

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

RSA No.5144 of 2017
Date of decision : 25.2.2019

Vijyant and another

.....Appellants

Versus

Attar Kaur

..... Respondent

RSA No.5753 of 2017
Date of decision : 25.2.2019

Smt. Attar Kaur

.....Appellant

Versus

Vijyant and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

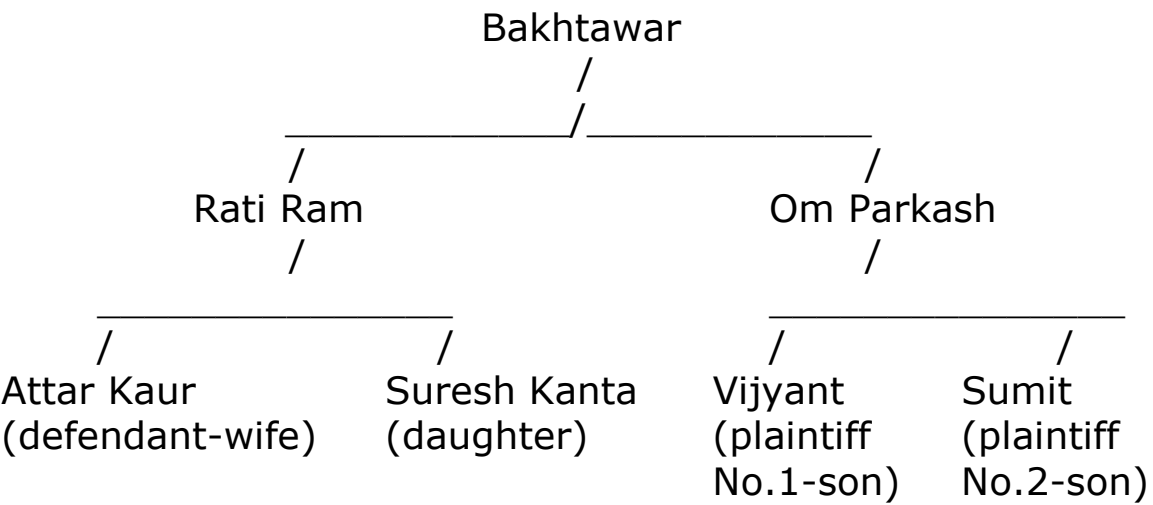
Present: Mr.D.K.Tuteja, Advocate for the appellants (in RSA No.5144-2017) and for the respondents (in RSA No.5753-2017).

Mr.R.S.Kundu, Advocate for the appellant (in RSA No.5753-2017) and for the respondent (in RSA No.5144-2017).

ANIL KSHETARPAL, J.

By this judgment, RSA Nos.5144-2017 and 5753-2017, both arising from the same suit, disposed by the trial Court as well as by the First Appellate Court by a common judgment, shall stand disposed of.

The plaintiffs as well as the defendant are in appeal. To understand inter-se relationship, a small pedigree table is drawn as under:



The plaintiffs, sons of Om Parkash, filed a suit for declaration claiming that they are owners in possession of the suit property which consists of a portion of house No.85/R situated in Model Town, Rohtak, agricultural land situated in village Ladayan (District Jhajjar), as also located in village Bahu Akbarpur Tehsil and District Rohtak. Village Ladayan is in District Jhajjar. Kabuliyatnama dated 27.2.2001 is in the form of a memorandum of family settlement. The plaintiffs claimed that family settlement took place during the life time of Bakhtawar, the common ancestors of the parties on the occasion of Diwali in the year 1999. Bakhtawar died on 18.1.2001 and thereafter parties reduced the memorandum of family settlement in writing. The defendant denied existence of any family settlement. She claimed that she is owner in possession of

the properties on the basis of judgments and decrees dated 25.4.1989 and 3.6.1992.

It may be noted that originally Bakhtawar was owner of the entire property. He partitioned the property through a family settlement and divided the property amongst his two sons, namely, Rati Ram and Om Parkash and kept some property for his own share. This was acknowledged through a judgment and decree dated 23.1.1970. Thereafter, Bakhtawar has been acknowledging further family settlements getting the judgments and decrees passed by conceding to the claim. The defendant is claiming property on the basis of aforesaid judgments and decrees.

The learned trial Court on appreciation of evidence found that kabuliyatnama dated 27.2.2001 has been proved. It was significant to note that when defendant-Attar Kaur appeared in evidence, she admitted that kabuliyatnama was written as there was imbalance in the distribution of the properties of both the parties. The arguments of learned counsel for the defendant that the said kabuliyatnama requires compulsory registration, was rejected and consequently, the suit filed by the plaintiffs was decreed.

The defendant filed first appeal. The learned First Appellate Court has affirmed the findings with respect to

execution of kabuliyatnama which is in form of memorandum of family settlement. However, the learned First Appellate Court has reversed the part of judgment passed by the learned trial Court on the ground that the property situated in village Ladayan, Jhajjar is not within the territorial jurisdiction of the Court at Rohtak and, therefore, the suit filed by the plaintiffs to that extent has been dismissed giving liberty to the plaintiffs to file a suit in District Courts, Jhajjar.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and photocopies of the records, the correctness whereof is not disputed.

The question which requires consideration as to whether if immovable properties which are subject matter of suit are situated within the jurisdiction of different Courts, the Court within whose jurisdiction one of the properties is situated, has territorial jurisdiction to pass a decree with respect of the properties situated outside its territorial jurisdiction.

Learned counsel for the appellant-defendant has submitted that suit filed by the plaintiffs was barred by

limitation as alleged family settlement took place in the year 1999 which was later on reduced in writing on 27.2.2001, whereas, the suit was filed on 1.6.2005. He submitted that the limitation is of three years from the date it was reduced in writing. He further submitted that as per the terms of kabuliyatnama, any party which goes to the Court, shall not be entitled to take the benefit and the kabuliyatnama shall stand cancelled. Hence, he submitted that the plaintiffs have filed a suit and, therefore, the plaintiffs cannot take the benefit thereof. He further submitted that there was exchange of some land between Attar Kaur and Om Parkash on 22.9.2000 in which there was no reference of the family settlement arrived at in the year 1999 was given. In the last, he submitted that only photocopy of the kabuliyatnama has been produced and, therefore, it cannot be held to be proved.

On the other hand, learned counsel for the plaintiffs submitted that the judgments passed by the Courts below are correct and in fact learned First Appellate Court has erred in overlooking the provisions of Section 17 of the Code of Civil Procedure which provides that where a suit is to obtain relief with respect to immovable property situated within the jurisdiction of different Courts, the suit may be

instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate. He also submitted that the learned First Appellate Court has erred in returning a finding that with respect to the property situated in District Jhajjar, the Court at Rohtak does not have the jurisdiction.

As regards the first argument, the learned counsel that the plaintiffs have filed a suit for declaration asserting their rights on the basis of memorandum of family settlement and hence, it time barred has no substance. The limitation begins to run in a suit for declaration from the date cause of action arises. In the present case, the cause of action did not arise on the date of execution of kabuliyatnama or memorandum of family settlement. It arose only when the defendant refused to honour it. It has been specifically pleaded by the plaintiffs that they requested the defendant to get the revenue record changed on the basis of memorandum of family settlement but she refused. Hence, the limitation cannot be said to be begun from the date of execution of memorandum of family settlement or the date on which the family settlement was arrived at.

The second argument of learned counsel for the defendant is also erroneous because the plaintiffs came to the Court asserting their rights on the basis of memorandum of family settlement as the defendant refused to accept the same and get it incorporated. Such suit filed by the plaintiffs cannot be treated as a suit challenging or disputing the correctness of the memorandum of family settlement. The purpose of incorporating such clause was to make the parties bound by the memorandum of family settlement and avoid any litigation. The plaintiffs had been making effort to get the revenue record changed as per the memorandum of family settlement and since the defendant refused, therefore, the suit was filed. Hence, the defendant who is disputing the correctness of the memorandum of family settlement cannot be permitted to allege that since the plaintiffs who have come for enforcing that settlement cannot take benefit of the memorandum of family settlement, therefore, the suit is not maintainable.

The next argument of learned counsel for the defendant also does not have any substance, because the family settlement is between Vijyant and Sumit on the one hand and Smt.Attar Kaur on the other hand. The exchange dated 22.9.2000 is between Attar Kaur(defendant) and Om Parkash. Hence, reference to the family settlement was not

necessary. Still further family settlement is in writing and each page has been signed by the parties. Apart from that, large number of witnesses have also signed the family settlement. The execution of the memorandum of family settlement has been proved by examining number of witnesses.

As regards the argument of learned counsel for the defendant that only photocopy of kabuliyatnama has been produced, it may be noted that application for permission to lead secondary evidence was moved. Still further as noted above, the defendant herself when appeared in evidence, has stated that kabuliyatnama was written because there was imbalance in the distribution of the property amongst two families. In view of the aforesaid admission, there is hardly any doubt with regard to correctness of the memorandum of family settlement .

Learned counsel for the defendant has further submitted that memorandum of family settlement was required to be registered. On reading of the memorandum of family settlement, it is apparent that the family settlement is in the form of memorandum. It is recording a past transaction. The family settlement arrived at in December 1999 was reduced into writing on 27.2.2001.

Hence, such document is recording a past transaction and hence it is permissible even through a unregistered document.

Now let us deal with the argument of learned counsel for the plaintiffs with respect to the lack of territorial jurisdiction with respect to the property situated in village Ladayan, District Jhajjar.

The learned First Appellate Court has clearly overlooked Section 17 of the Code of Civil Procedure which deals with such eventuality and permit party to invoke the jurisdiction of any Court within the local limits of whose jurisdiction any portion of the property is situated. Section 17 of the Code of Civil Procedure is extracted as under:

“Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

A suit to obtain relief respecting, or compensation for wrong to, immovable property which is situate within the jurisdiction of different courts may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate, provided that in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such court."

In view thereof, the learned First Appellate Court has erred. The remaining properties which are subject matter of the suit are situated in District Rohtak the place where the suit was filed. The property situated in village Bahu Akbarpur as well as portion of the house is located within the territorial jurisdiction of Rohtak Courts. Hence, the Courts at Rohtak had jurisdiction to entertain and decide the dispute with regard to the properties situated outside its territorial jurisdiction.

In view of the aforesaid discussion, the question framed above, is answered in favour of the plaintiffs. Resultantly, RSA No.5753-2017 shall stand dismissed, whereas, RSA No.5144-2017 filed by the plaintiffs shall

stand allowed and the judgment passed by the trial Court
would stand restored.

February 25,2019
KD

(ANIL KSHETARPAL)
JUDGE

Whether speaking / reasoned:

Yes / No

Whether Reportable:

Yes / No