

RSA No. 5609 of 2018 (O&M)

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

**RSA No. 5609 of 2018 (O&M)
Date of decision: 22.10.2019**

Bimla Devi

... Appellant

Versus

Lakhmi Chand

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Ashok Kumar Khunger, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the plaintiff-appellant was dismissed by the trial court, vide judgment and decree dated 3.1.2017, and as even the appeal preferred against the said decree failed and was dismissed on 17.5.2018, she is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for a declaration that she was owner in possession of a constructed house comprised in khasra No. 167/5/122, measuring 1 kanal, situated in Mohalla Jaggiwanpura, Basti Bhiwan Tehsil and District Fatehabad, for the past 25 years, which wrongly and illegally stood in the name of the defendant in the records of rights, along with half share of a constructed house within Lal Lakir of village Dhand, District Fatehabad and 1/4th share of shop No.68, situated at Grain Market,

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purchased in open auction on 21.10.1981 in the name of the defendant, and on the basis of oral family and mutual settlement between the plaintiff and defendant, who are husband and wife, on 8.3.2004, the plaintiff was entitled to get her name incorporated in the revenue records as also in the records of Municipal Council, Fatehabad. An injunction was also prayed for, restraining the defendant from alienating or creating any charge over the suit property and also from causing any interference in her possession.

In the written statement filed by the defendant, it was pleaded, *inter alia*, that version of the plaintiff that was she was legally wedded wife of the defendant was wrong and incorrect. The defendant was married to Smt. Ram Kaari and at the time of solemnisation of alleged second marriage with the plaintiff, first wife of the defendant, i.e. Smt. Ram Kaari, was alive, and therefore, plaintiff could not be considered as legally wedded wife of the defendant. On 1.2.1979, one daughter, namely Sunita, was born to plaintiff and defendant, who was now married and residing at Abohar. It was incorrect that on 8.3.2014, the defendant, in the presence of other family members, promised to give 120 kanals of land in village Dhand and a constructed house in Fatehabad. Thus, the entire version of the plaintiff qua the alleged family settlement was false. Likewise, the alleged release deed dated 9.1.2014 was a false and bogus document, obtained by plaintiff in connivance with her brother. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that none other than the plaintiff (PW1), herself conceded in her cross examination that water connection since 1998 as also sewerage connection since 2006 were operative in the name of the defendant. The witness of the plaintiff (PW2)

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also admitted in his testimony that house in which the plaintiff was residing belonged to the defendant (Lakhmi Chand). He also admitted that no oral family settlement ever took place in his presence and the suit property was never transferred to the plaintiff by the defendant. Further, bills (Ex.D1 to ExD3) and receipt (Ex.D4), as conceded by PW5, were in the name of defendant and no application was ever made to the Electricity Board before seeking transfer of electricity connection in the name of plaintiff. Not just that, PW6 conceded in his cross examination that no written agreement was ever arrived at between the plaintiff and defendant qua the suit property. He also did not know as to which portion out of the suit property was given to the plaintiff, pursuant to the alleged family settlement. Further, PW7, admitted in her cross examination, that it was never disclosed by the plaintiff that plot in question was transferred in her name by the defendant. Plaintiff herself admitted in her statement that she had neither got the site plan sanctioned qua the house in question from the Municipal Committee, Fatehabad, nor she had any evidence of having constructed the said house.

Although the case set out by the plaintiff was that family settlement had taken place in the presence of Panchayat members and other respectable persons of the society, but no evidence was led in this regard. Rather, plaintiff, on the other hand, claimed the suit property to be ancestral in nature, whereas her claim all through was that she was owner of the house in question, pursuant to the alleged family settlement. No application was ever made by the plaintiff to seek transfer of ownership in her name. The plea set out by the plaintiff that a land measuring 120 kanals was transferred by the defendant in her favour, pursuant to a release deed dated 9.1.2014, which would rather show that an oral family settlement had taken place

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between them, also remained unsubstantiated. For the alleged release deed was never produced before the court, thus, there was no evidence on record for the court to infer if a land measuring 120 kanals was, indeed, transferred by the defendant in favour of the plaintiff, pursuant to any family settlement. Likewise, in the absence of any conclusive evidence, claim of the plaintiff qua possession over the suit property could not be countenanced merely because she had produced certain electricity and water bills in respect of the properties of the defendant. Ex facie, claim of the plaintiff was predicated upon an oral family settlement and once she failed to prove the alleged settlement for lack of evidence, the only and the inevitable conclusion that could be reached: the suit was liable to be dismissed. Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

October 22, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO