

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

RSA No.7603 of 2018 (O&M)

Date of Decision:14.05.2019

Mohan Lal and others

.....Appellants

Versus

Shri Chand and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Krishan Singh, Advocate
for the appellants.

Mr. L.S.Mann, Advocate
for respondent no.1/caveator.

LISA GILL, J.

Appellants, arrayed as defendants no.2 to 7 before the learned trial court, have filed this appeal being aggrieved of judgement and decree dated 27.04.2015 passed by the learned Civil Judge (Sr. Division) Yamuna Nagar at Jagadhri, as well as judgement and decree dated 10.07.2018, passed by the learned Additional District Judge, Yamuna Nagar at Jagadhri.

Brief facts necessary for the adjudication of the case are that plaintiff-Shri Chand son of late Chanu Ram, admittedly the brother of defendant no.1 and grandfather of defendants no.2 to 7, filed a suit for possession of the land as detailed in the plaint. It is pleaded that Chanu Ram, father of the plaintiff, defendant no.1 and grandfather of defendants no.2 to 7 was owner in possession of the suit property and the suit property came to the share of the plaintiff in a family settlement. Chanu Ram suffered a decree dated 10.08.1999 in favour of the plaintiff and the plaintiff has been the owner of the suit property since then. As the plaintiff was an employee with the Syndicate Bank, Yamuna Nagar and residing in the city, he permitted his brother-defendant no.1-Ram Parsad to raise construction on

the suit property. Construction as depicted in the rough site plan attached with the plaint was raised by defendant no.1. In order to retain his overall possession over the suit property, the plaintiff put a tin-shed over the boundary wall and kept a buffalo therein. However, defendant no.1-Ram Parsad without any intimation or consent of the plaintiff, allowed defendants no.2 to 7 i.e., sons of the plaintiff's deceased brother to tether their cattle in the remaining part of the suit property. The plaintiff objected to the same. Defendants refused to admit the ownership of the plaintiff. Hence the suit was filed.

Defendant no.1, upon notice filed a written statement admitting the claim of the plaintiff. However, he denied having any mala fide intention towards the plaintiff. Defendants no.2 to 7 (present appellants) resisted the suit and denied that the suit property ever came to the share of the plaintiff. It is stated that the suit property was ancestral property which was earlier owned and possessed by Chanu Ram. It is further stated that in an oral family settlement, the plaintiff was given money in lieu of his share in the land as he was a bank employee and was settled in Yamuna Nagar. Chanu Ram, it is stated was an old, aged, infirm and illiterate person, whose thumb impressions were obtained on blank papers and misused in order to secure a decree from the Court. Defendant no.1 is alleged to have colluded with the plaintiff in order to harass defendants no.2 to 7. The tin-shed, it is claimed was set up by defendants no.2 to 7 and the plaintiff have no concern with it. Dismissal of the suit was prayed for.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is owner of the suit property detained in the head note of the plaint?OPP
2. Whether the plaintiff is entitled to the recovery of possession of the suit property on the basis of his ownership declared vide judgement and decree passed in case titled as Shri Chand Vs. Chanu Ram?OPP
3. Whether the suit of the plaintiff is not maintainable?OPD
4. Whether the plaintiff has concealed the true and material facts from the Court?OPD
5. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances, as well as the evidence on record concluded that Chanu Ram had suffered a decree in favour of the plaintiff. Moreover, the appellants had themselves admitted the oral family settlement. Therefore, it did not lie with them to challenge the title of Chanu Ram as urged. The suit filed by the plaintiff was accordingly decreed.

Appeal preferred by the present appellants was dismissed by the learned Additional District Judge, Yamuna Nagar at Jagadhri, vide impugned judgement and decree dated 10.07.2018.

Aggrieved therefrom, present appeal has been filed by appellants.

Learned counsel for the appellants vehemently argues that both the learned Courts below have wrongly decreed the suit for possession filed by respondent no.1/plaintiff. It is submitted that in-fact Chanu Ram had solemnized two marriages, one with Sarji Devi and one with Kundani Devi. A son namely Bhangi Ram was born out of the wedlock with Sarji Devi and the present appellants are the sons of Bhangi Ram i.e., defendants no.2 to 7 before the learned trial Court. Three sons namely Shri Chand-plaintiff, Ram

Parsad-defendant no.,1, Laxman (who is not a party to this case), Jarnailo-PW-1 and Ishro Devi-PW-2 were born out of the wedlock of Chanu Ram with Kundani Devi. It is contended that the suit property was ancestral in nature, therefore, decree dated 27.04.2015 could not have been executed by Chanu Ram in favour of the plaintiff. Moreover, the family settlement on the basis of which decree dated 27.04.2015 is stated to have been passed, has not been produced much less proved. Furthermore, the decree in question requires registration. There is no explanation as to why execution of the decree was not filed by the plaintiff despite the decree being passed in 1999 and as to why the present suit was filed in 2011. It is thus prayed that this appeal be allowed and the judgements and decrees passed by the learned Courts below be set aside.

Learned counsel for respondent no.1/caveator while refuting the abovesaid averments submits that possession was delivered to the plaintiff in 1999 itself. As the plaintiff was residing in the city of Yamuna Nagar, being an employee of the bank at that time, he permitted defendant no.1 to be in possession of the suit property. Defendants no.2 to 7 were given possession of a part of the suit property by defendant no.1 without the consent of the plaintiff and without any intimation to him. It is thus prayed that present appeal be dismissed and the judgements passed by the learned Courts below be upheld.

I have heard learned counsel for the appellants and have gone through the file as well as the photocopy of the record produced in Court today, with his assistance.

At the outset, it is relevant to mention that the argument raised

by learned counsel for the appellants in respect to two marriages solemnized by Chanu Ram and the progeny therefrom, is not a part of the pleadings. A perusal of the written statement filed on behalf of the present appellants i.e., defendants no.2 to 7 reveals the same.

Learned counsel for the appellants is unable to deny that no such plea has been raised and neither is there any such narrative in this regard. It is a matter of record that the defendants in their written statement have taken a stand that an oral family settlement indeed took place, but the plaintiff got money in lieu of his share in the land. Argument raised by learned counsel for the appellants that Chanu Ram could not have suffered a civil court decree in respect to the property as it was ancestral, is not tenable considering the fact that the present appellants admittedly got their respective shares pursuant to the family settlement. Defendant no.2, in his cross-examination has clearly admitted that their grandfather-Chanu Ram had partitioned the property during his lifetime in which the defendants had got a 'Bara' situated in the Abadi of the village. DW-2-Mohan Lal, in his cross-examination admitted that the plaintiff-Shri Chand was not given any cash amount at the time of partition of the property. Chanu Ram had in-fact given his property to his four sons while ignoring his daughters, who were already married. DW-2, admitted that the disputed 'Bara' and the houses within the *Lal Dora* had been constructed by Chanu Ram himself.

It is relevant to note that defendant no.1, the plaintiff's brother has duly supported his case. Furthermore, two of the plaintiff's sisters namely Jarnailo Devi-PW-1 and Ishro Devi-PW-2, have also supported the plaintiff's case. PW-3-Ram Kumar, Ex-Member of Gram Panchayat, PW-4-

Mam Raj, Numberdar, have categorically supported the plaintiff's case. Both the sisters of the plaintiffs have specifically admitted the partition of the family property amongst their brothers in the oral family settlement, which is also admitted by defendant no.2 in his cross-examination. There is no evidence on record to prove that the Civil Court decree dated 10.08.1999 is a result of any kind of fraud at the hands of the plaintiff. There is no evidence on record to prove that Chanu Ram was infirm or not in possession of sound mental faculties at the time of the passing of the decree dated 10.08.1999 or that the same was a result of any kind of fraud.

Learned counsel for the appellants, is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below have returned concurrent findings vide impugned judgements, after proper appreciation and consideration of the evidence on record, which calls for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 27.04.2015 and 10.07.2018 passed by the learned Civil Judge (Sr. Division) Yamuna Nagar at Jagadhri and learned Additional District Judge, Yamuna Nagar at Jagadhri, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

14.05.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.