

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1300-2016(O&M)
Date of decision:16.03.2020

Ombir

.....Appellant

Versus

Chander Bhan

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ajay Sharma, Advocate for the appellant

Mr. Sunny Tyagi, Advocate for

Mr. Vikrant Hooda, Advocate for the respondent

ANIL KSHETARPAL, J.

The plaintiff-appellant has filed the present Regular Second Appeal against the concurrent finding of facts arrived at by the Courts below while dismissing suit filed by the plaintiff for declaration to the effect that the plaintiff is owner in possession of half share in the plot measuring 100 sq. yards and the defendant be restrained from interfering in his possession.

The plaintiff and defendant are nephew and uncle respectively. Father of the plaintiff-Sat Pal Singh is brother of defendant-Chander Bhan. The plaintiff and defendant jointly purchased a residential plot measuring 100 sq. yards vide registered sale deed dated 16.4.1999. The plot is located at Bahadurgarh. The plaintiff on the

strength of the aforesaid sale deed claims that he is in possession of 50 sq. yards i.e half share. On the other hand, defendant contested the suit and pleaded that no doubt the plot was purchased jointly by the plaintiff and the defendant but, thereafter, a family settlement was arrived at on 31.3.2004, which was further reiterated vide memorandum of family settlement dated 22.8.2004 according to which the plaintiff was left with no right, title or interest in the property. Both the Courts on appreciation of evidence have found that writings dated 31.3.2004 as also dated 22.8.2004 have been proved. Learned First Appellate Court has ignored the first writing dated 31.3.2004 on the ground that it was unregistered however, the writing dated 22.8.2004 has been accepted being memorandum of family settlement arrived at between the parties.

It will be significant to note here that the plaintiff when appeared in evidence as PW6 has admitted that defendant is residing in the aforesaid plot after constructing his house.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the requisitioned record.

Learned counsel for the appellant has contended that both the writings dated 31.3.2004 and 22.8.2004 cannot be treated as relinquishment of rights in the immovable property because both were not registered. He, hence, submitted that both the documents cannot be read in evidence.

On the other hand, learned counsel for the respondent has supported the judgments passed by the learned Courts below.

On careful reading of Ex.D2 dated 22.8.2004, it is apparent that this document although styled as mutual settlement, however, it is referring to a settlement arrived at between the parties prior in point of time. A reference is also made to the writing dated 31.3.2004. It is also not in dispute that parties are closely related to each other. In these circumstances, learned First Appellate Court has correctly arrived at a finding that the writing dated 22.8.2004 is in fact a memorandum of family settlement. Thus, the First Appellate Court has correctly held that in view of the judgment passed by the Hon'ble Supreme Court in 'Kale Vs. Deputy Director of Consolidation, AIR 186 SC page 807' that a memorandum of family settlement which recognizes a prior settlement does not require registration.

Keeping in view the aforesaid facts, the argument of the learned counsel for the appellant that document Ex. D2 cannot be read into evidence is without any substance and therefore, cannot be accepted. In view thereof, there is no ground to interfere.

Dismissed.

16 .03.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No