

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-171-2021 (O&M)
Date of Order:01.04.2021

DALJIT SINGH AND ANR

..Appellants

Versus

MOHAN SINGH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gurvinder Singh Sandhu, Advocate,
for the appellants.

ANIL KSHETARPAL, J(Oral)

Plaintiff No.2 and 3 have filed this Regular Second Appeal against the judgment and decree passed by the learned Additional District Judge, Fatehgarh Sahib, while accepting the appeal filed by defendant No.1 and setting aside the judgment and decree passed by the learned trial Court.

The parties are being referred to their status in the suit.

The plaintiffs filed a suit for grant of decree of permanent injunction restraining the defendants from causing interference in their peaceful possession over the house property comprised in Khata No.341/575 Rect. 30//Killa No.15/1(5-6) to the extent of 8/160 share which is equivalent to the land admeasuring 8 marlas. The plaintiffs claim that they have purchased the property by a registered sale deed dated 24.01.2008 from Ranbir Singh-defendant No.3 and are in the peaceful possession of the property and the defendants have no right, title or interest in the property.

The suit was mainly contested by defendant No.1. He pleaded that the suit property alongwith the other property was owned by five brothers namely Balwant Singh, Jaswant Singh, Harbans Singh, Jasvir Singh and Ranbir Singh. Sh. Balwant Singh got married to Smt. Harjit Kaur but remained issueless. In the year 1977, a family settlement was arrived at between the brothers and the land admeasuring 16 kanals and 17 marlas including the suit property fell to the share of late Sh. Balwant Singh. He constructed a house thereupon. Subsequently, a memorandum of family settlement was signed between the brothers on 04.12.1978 acknowledging the family settlement arrived at in the year 1977. Defendant No.1 claimed that the sale deed dated 24.01.2008 was the result of a sham transaction.

Learned trial Court, on appreciation of evidence, granted a decree for permanent injunction which, as noticed above, has been reversed by the learned First Appellate Court. Defendant No.1 claims the property from late Sh. Balwant Singh and late Smt. Harjit Kaur on the basis of a registered Will.

Learned First Appellate Court has found that the memorandum of family settlement dated 04.12.1978 has been proved before the Court in a judgment dated 01.09.2000 which was further upheld in appeal vide a judgment dated 03.03.2003. Even subsequently, the aforesaid memorandum of family settlement was found to be genuine in the judgment dated 30.10.2012 and it was held that the land comprised in Rect. No.30, Khasra No.15/1 (1-13) fell to the share of late Sh. Balwant Singh.

Learned First Appellate Court further found that from the record of the Municipality, water connection, house tax receipts, electricity

bill payments and photographs etc., it is proved that it is the defendant No.1 who is in possession of the property. Still further, the Court found that Harbans Singh, Jasvir Singh, Ranbir Singh and Jaswant Singh (the remaining four brothers of Balwant Singh) have been selling specific portion of the property in terms of a family settlement arrived at in the year 1977. It was also found that on the basis of a registered testamentary disposition, the property stands mutated in favour of defendant No.1. Accordingly, the First Appellate Court reversed the judgment of the learned trial Court.

Learned counsel for the appellants contends that the sale deed executed on 24.01.2008 has never been challenged, therefore, it is valid. He further submits that Ex.D-19 is a sale deed executed by Ranbir Singh in favour of Jasvir Singh and since the aforesaid sale deed has also not been challenged, therefore, the judgment of the First Appellate Court is erroneous.

This Court has heard learned counsel for the appellants and with his able assistance perused the paper-book.

The concept of challenge to a sale deed or a document is provided under Section 31 of the Specific Relief Act, 1961. A party to a document is required to challenge the same. The person who is not a party to a document or a judgment is not required to challenge the same and can file a suit for declaration of his legal status in accordance with Section 34 of the Specific Relief Act, 1961. In the present case, defendant No.1 was not a party to the sale deed dated 24.01.2008 and therefore, he was not required to challenge the same. Still further, onus lies upon the plaintiffs to prove that their vendor-Ranbir Singh was the owner of the property on the date of sale

i.e. 24.01.2008. It is proved by overwhelming evidence that Ranbir Singh, one of the brothers of late Sh. Balwant Singh entered into a family settlement in the year 1977 which was later on acknowledged by a memorandum of family settlement executed on 04.12.1978. Thus, Ranbir Singh was no longer a co-owner/owner in the property in dispute, therefore, he had no right to execute the sale deed. Similarly, the sale deed Ex.D-19 is also not binding on defendant No.1 for the same reasons.

Learned counsel for the appellants has failed to draw the attention of the Court to any error in the findings of fact arrived at by the First Appellate Court with regard to the possession of defendant No.1 and the correctness of the memorandum of family settlement.

Learned counsel for the appellants contends that the memorandum of family settlement is not incorporated in the revenue record and therefore, cannot be accepted.

As already noticed, the memorandum of family settlement has already been upheld in two different litigations.

Learned counsel for the appellants further contends that the memorandum of family settlement is not registered and therefore, it cannot be read in evidence being inadmissible. It may be noted here that a memorandum of a family settlement is not required to be registered particularly when it is with respect to a family settlement which has already been arrived at and subsequently only a memorandum has been reduced in writing and signed by the family members. Further, the memorandum only acknowledges the already existing rights of the parties in the property and no new rights is sought to be created. Still further, memorandum of family settlement is a well recognized method of settling the family disputes and

the Court always leans in favour of up-holding the same.

Keeping the aforesaid facts, no ground to interfere.

Dismissed.

April 01, 2021
Ayub/nt

(ANIL KSHETARPAL)
JUDGE

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