

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110

CR-5398-2016 (O&M)
Date of decision: 18.11.2022

CHANDER PARKASH DHINGRA @ C.P. DHINGRA ..Petitioner

Versus

ASA NAND & OTHERS ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sapan Dhir , Advocate
for the petitioner.

Mr. Lokesh Sinhal, Advocate
for respondent No.1, 3, 6, 7, 8A & 9.

Mr. Amit Arora, Advocate
for respondent No.11.

Mr. S.K. Mahajan, Advocate
for respondent No.12.

ANIL KSHETARPAL, J(Oral)

1. While invoking the jurisdiction of this Court under Article 227 of the Constitution of India, the petitioner prays for setting aside the order dated 20.08.2014, passed by the Additional Civil Judge (Senior Division), Faridabad, Haryana as well as the order dated 28.01.2016 passed by the Additional Distirct Judge, Faridabad, Haryana,affirming the former order in appeal.

2. The relevant facts in brief are required to be noticed.

3. The plaintiff as well as defendant No.1 to 7 are heirs of late Sh. Ditta Ram Dhingra. Sh. Asa Nand Dhingra and Sh. C.P. Dhingra, sons of late Sh. Ditta Ram Dhingra filed a suit for grant of decree of declaration as well as mandatory injunction along with the consequential relief of permanent injunction.

4. Para 10 of the plaint reads as under:-

“That although no relief is being claimed against the defendant No.1 to 3, 5, 6, 8 & 9, but they have been impleaded in the suit as they are necessary parties to the suit.”

5. In the plaint, the following prayer was made:-

“i) a decree of declaration to the effect that the portion of plot No.R-1/C, NH-V, N.I.T. Faridabad marked with letters G H I J is the common passage left for the common use of the plaintiffs, defendants No.1 to 7.

ii) As a consequential relief a decree of mandatory injunction thereby directing the defendants No.4, 7 and 10 to remove the encroachment from the common passage marked with letters G H I J and to bring the same as common passage as it was earlier.

iii) Any other relief which this Hon'ble court deems fit and proper in the circumstances of the case may also be granted in favour of the plaintiffs.

iv) Cost of the suit may also be granted in favour of the plaintiffs.”

6. The defendant No.1 (Sh. C.P. Dhingra) is the petitioner herein.

It is evident that no relief in the suit was sought against the petitioner.

However, on receiving notice, the petitioner engaged a counsel Sh. P.P.

Gosain, who was practicing along with his son Sh. Sandeep Gosain,

Advocate. As per the vakalatnama (power of attorney) dated 17.04.2006, the

petitioner engaged the aforesaid counsels to appear on his behalf.

7. The petitioner did not choose to file any written statement.

8. On 24.05.2006, Sh. P.P. Gosain, Advocate, stated as under:-

“Stated that I have no instruction to appear in this case on behalf of defendant No.1 only.”

9. On the same day, the Court passed the following order:-

“Costs deposited. Receipt placed on file.

Ld. counsel for the defendant Sh. P.P. Gosain made a statement that he has no instruction to appear in this case on behalf of defendant no.1 only. Case called several times but none appeared on behalf of defendant no.1. It is now 11:00 a.m. Further wait is not justified.

Hence defendant no.1 proceeded against exparte. Written statement on behalf of defendant no.2, 3, 6 & 9 filed. Copy supplied. An application on behalf of defendant for directing MCF to place on record the documents and another application for directing the defendant to place on record the documents filed on behalf of defendant. Copy supplied. Now to come up on 25.5.2006 to reply these applications and consideration there upon and arguments on stay matter be also heard on date fixed.”

10. There was a settlement between the contesting parties. It is alleged that Sh. Sandeep Gosain, Advocate, son of Sh. P.P. Gosain, Advocate, signed a deed of settlement on behalf of the petitioner, though, the petitioner admittedly never signed the aforesaid deed of compromise. Sh. P.P. Gosain, Advocate and Sh. Sandeep Gosain, Advocate, were appearing not only for the petitioner (defendant No.1) but they were also appearing on behalf of defendant No.2, 4, 6, 7 and 9 in the suit.

11. In the deed of compromise, the space where the name of Sh. C.P. Dhingra has been printed, is blank. Sh. Sandeep Gosain, Advocate, has signed after the parties have signed the document, except Sh. C.P. Dhingra has not signed the document and Sh. Sandeep Gosain has signed on behalf of him under the expression “through counsel”. Both the Courts have concluded that Sh. C.P. Dhingra is bound by the aforesaid settlement. The question is “whether Mr. C.P. Dhingra, the petitioner, ever entered into the said settlement?”

12. This Bench has heard the learned counsel representing the parties and with their able assistance perused the paperbook along with the requisitioned record.

13. The learned counsel representing the petitioner has highlighted the facts which have already been noticed.

14. On the other hand, the learned counsel representing the respondent submits that the power of attorney was not only in favour of Sh. P.P. Gosain, Advocate, but also in favour of Sh. Sandeep Gosain, Advocate. He submits that Sh. Sandeep Gosain, Advocate never withdrew from the case on behalf of the petitioner.

15. A settlement between the parties is essentially a contract to which the parties mutually agree upon. In the absence of an agreement, there is no valid contract. As already noticed, Sh. C.P. Dhingra has not signed the agreement. Now, the question is whether Sh. Sandeep Gosain, Advocate, could sign on behalf of the petitioner? From a bare perusal of the settlement, it is evident that Sh. Sandeep Gosain, Advocate did not sign on behalf of the petitioner as he has not signed at the place where the name of Sh. C.P. Dhingra has been printed. Moreover, the power of attorney in favour of Sh. Sandeep Gosain, Advocate was not an independent document but joint with his father. He was engaged along with his father Sh. P.P. Gosain on 24.05.2006, Sh. P.P. Gosain, Advocate has nowhere stated that Sh. Sandeep Gosain, Advocate will continue to represent defendant No.1 (petitioner). On the same day, the trial Court ordered ex parte proceedings against the petitioner. No notice was issued to the petitioner. Sh. Sandeep Gosain, Advocate was never engaged by Sh. C.P. Dhingra after 24.05.2006. Moreover, Sh. Sandeep Gosain, Advocate has signed under the expression “through counsel”. It has not been specified that he signed the document on behalf of and with the consent of defendant No.1 (petitioner). As already noticed, Sh. P.P. Gosain, Advocate and Sh. Sandeep Gosain, Advocate were appearing on behalf of defendant No.2, 4, 6, 7 and 9.

16. Keeping in view the aforesaid facts, both the Courts have committed a patent error in concluding that there was a valid settlement between the petitioner and the other parties to the suit. Even if a lawyer is permitted to enter into a settlement as per the terms of the power of attorney, however, the Court is required to be careful in accepting such a settlement. This is a case where the settlement has been arrived at on 08.04.2009 i.e. nearly three years after Sh. P.P. Gosain, Advocate had withdrawn his power of attorney on behalf of the petitioner.

17. In such circumstances, both the Court have committed a material irregularity in overlooking these facts.

18. Keeping in view the aforesaid discussion, the orders dated 20.08.2014 and 28.01.2016, are set aside qua the petitioner. It is declared that there was no valid or binding settlement between the petitioner and the remaining parties. The petitioner shall not be bound by the aforesaid settlement.

19. With all these observations, the present petition is disposed of.

20. All the pending miscellaneous applications, if any, are also disposed of.

November 18th, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*