

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

RSA-769-2022(O&M)

Date of decision: 25.05.2022

Indar Krishan Mehta

....Appellant

Versus

Kewal Krishan Mehta (since deceased) through LRs

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Sethi, Advocate for the appellant
Ms. Monita Mehta, Advocate for respondents

ANIL KSHETARPAL, J (Oral)

1. The plaintiff has filed the present appeal assailing the correctness of the judgments and decrees passed by both the courts below whereby his suit for grant of declaration, to the effect that he is the owner in possession of half share of property i.e House no.81 Sector 19 A Chandigarh, on the basis of memorandum of family settlement has been dismissed.

2. After having heard the learned counsel representing the parties, this Court is of the opinion that the following questions of law arise for consideration :-

A) In a suit for grant of declaration with respect to an exclusive inter se dispute between two brothers, whether the remaining family members or the State Government or the municipal authority are necessary parties?

B) Whether it is appropriate for the court to travel beyond the scope of the suit asserted in the pleadings of both the

parties?

3. Some facts are required to be noticed. The appellant before this Court is the plaintiff (Indar Krishan Mehta). The defendant in the suit was late Shri Kewal Krishan Mehta, who is now represented by his legal representatives namely Smt. Saroj Mehta and Ms Monita Mehta. In the present case, the dispute is with respect to House No. 81 Sector 19 A Chandigarh. The plaintiff filed a suit claiming that the aforesaid the property was purchased jointly by Kewal Krishan Mehta and Indar Krishan Mehta and they collectively raised the construction on the property. Of course, as per the wishes of their father (Late Sh. H.R.Mehta) the property was purchased in the name of Sh. Kewal Krishan Mehta. Late Shri H.R Mehta has had four sons namely late Sh. Kewal Krishan Mehta, Sh. Indar Krishan Mehta, Sh. Baldev Krishan Mehta and Sh. Ravindra Krishan Mehta. The dispute in the present case is with regard to the interpretation of the memorandum of settlement dated 28.02.2001. The plaintiff claims that he is the owner in possession to the extent of half of the suit property, whereas, it is the stand of the defendant that the declaration has been sought by misinterpreting the memorandum of settlement of the suit property and the suit property was never intended to be partitioned. It is claimed that the suit property is exclusively owned by the defendant but it is admitted that the plaintiff and his spouse have right to live in the house as per the family settlement. It is also stated that as per the memorandum of family settlement, the plaintiff has failed to share the rental income of the house situated in village Manali, which is in the name of the plaintiff.

4. In fact, the registered memorandum of family settlement dated 28 February, 2001 between the plaintiff and the defendant is not a disputed document. Hence, it becomes important to extract the memorandum of family settlement:-

“Memorandum of Mutual family settlement & arrangement for future living between Kewal Krishan Mehta and Inder Krishan Mehta, Advocates, sons of Late Shri Hans raj Mehta, resident of H.No.81 Sector 19 - A, Chandigarh .

With the grace of God Almighty and blessings, we have lived together happily for last more than forty years. To keep the spirit alive in future and abide by our decision & family arrangement by way of private partition made in 1991-92 to live and work together jointly, we hereby record this Memorandum of mutal family settlement and living arrangement.

1. **House No. 81, Sector 19 - A . Chandigarh.** This house is owned by us jointly in equal share, although, the plot of land was purchased vide registered sale deed dated 18.1.1966 in the name of Kewal Krishan Mehta being the eldest son as desired by our parents. Our younger brothers Baldev Krishan Mehta & Ravinder Krishan Mehta, who are living in USA and settled their for more than 25 years have no right or claim thereto. We two have contributed jointly and equally towards the construction furniture, fixtures and fittings in the house on the plot from time to time. The maintenance and repair charges besides electricity and water bills are to be shared jointly half and half.

3. **House No. 27. Model Town , Manali (H.P.).** Plot No. 27, Model Town, Manali, H.P. was purchased in the name of Indar Krishan Mehta and three storeyed house constructed thereon. Although the ownership of the said house stands in the name of Indar Krishan Mehta, it is jointly owned by us in equal share. It is presently on rent with tenants. Its rent & maintenance etc. shall be shared half and half.

4 . Punjab Law Journal -A Journal started by us jointly more than three decades ago is owned and published by Indar Krishan Mehta ago being its Editor. Kewal Krishan Mehta who is presently devoting most of his time to this publication will be wholly & exclusively owner of the same.

5 . Office Library, fixtures & fittings . Office Library, books, fittings furniture , fixtures & fittings

are owned by Inder Krishan Mehta.

In order to remove any doubts, it is hereby clarified that this is neither a deed of peace nor division. This Memorandum has been made to ensure all round peace, prosperity, happiness and better understanding & cordiality in future also. Further a condition is imposed on both of us that during our lifetime and that of our spouses the aforesaid property shall not be sold or encumbered in any manner. Our children may after our death deal with the same in the manner they find suitable for beneficial enjoyment in the shares we hold at present.”

5. Let us analyze the reasons recorded by the courts below while dismissing the plaintiff's suit:-

1) Remaining two brothers have not been impleaded as party as they may have contributed in the purchase and construction of the house.

2)The sale deed dated 18th January, 1966 has not been challenged

3) The Estate Office has not been impleaded as party.

4) It seems to be nothing but a collusive suit between the parties to the lis to escape the Legal procedure/formalities required for mutation of inheritance of the properties left behind by their father without impleading all his legal heirs as such.

6. At this stage, it is important to note that Order 1 Rule 3 of the Code of Civil Procedure, 1908 prescribes who may be joined as defendants in one suit, which is extracted as under:-

“Order 1 Rule 3. WHO MAY BE JOINED AS DEFENDANTS.

All persons may be joined in one suit as defendants where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or

transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.”

7. Further, Order 1 Rule 9 CPC talks about misjoinder and non-joinder of the parties. A necessary party is one, in whose absence, no effective order can be passed in the suit, whereas a proper party is one, in the absence of whom, effective order can be passed but whose presence helps the Court in better adjudication of the dispute. In simple language, a party indirectly interested in a suit is not a necessary party and no suit is allowed to be dismissed due to his absence under Order 1 Rule 9 CPC, which is extracted as under:-

“Misjoinder and non - joinder . - No suit shall be defeated by reason of the or non - joinder of parties , and the Court may in every suit deal with misjoinder the matter in controversy so far as regards the rights and interests of the parties actually before it : [Provided that nothing in this rule shall apply to non - joinder of a necessary party .]

8. The Court must apply the following tests to determine the essentiality of the party in the suit before returning a finding that suit is bad for non-joinder of necessary parties:-

- (1) Whether the Court finds it unable to pass an effective decree, in such party's absence.
- (2) Whether such party has any legal right in the property involved in the suit.
- (3) Whether the party is one against whom the relief is being claimed and in whose absence relief otherwise claimed cannot be ordered.

(4) Whether the relief claimed against such party is a substantial relief or an ancillary or incidental relief.

9. These tests are not exhaustive but merely illustrative. They may vary according to the peculiar facts and circumstances of the case and depending upon whether the party in question is plaintiff or defendant.

10. It must also be appreciated that while deciding a suit for declaration, the Court is passing a decree in personam i.e. it is binding only on the parties and those claiming through them as expressly provided in Section 35 of the Specific Relief Act, 1963, which is extracted as under. It is not a decree in rem.

“35. Effect of declaration - A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration such parties would be trustees.

11. Now the Bench proceeds to examine the reasons recorded by the courts below. It may be noted here that neither party to the suit claims that the property is a joint Hindu family property of the joint Hindu family consisting of four brothers. It is also not their case that the property was originally owned or purchased by their father (Late Sh. H.R.Mehta) in the name of Late Sh. Kewal Krishan Mehta. It is the positive case of the plaintiff that the property was purchased by two brothers, though in the name of Late Sh. Kewal Krishan Mehta, the eldest brother, as per the wishes of their father. It is also the positive case of the plaintiff that he alongwith Late Sh. Kewal Krishan Mehta shared

the financial burden of construction of the house. The defendant never asserted that the other two brothers ever contributed or were co-owners having any right, title or interest in the property. The courts have erroneously dismissed the suit on the ground of non impleadment of the necessary parties as they were necessary to the suit. In Court's opinion, remaining two brothers were not even proper parties as their presence was immaterial to give the relief of declaration which was being sought in the suit. Similarly, both the court have erred in dismissing the suit on the ground that the Estate Office, UT, Chandigarh or the Municipal Corporation, Chandigarh, have not been impleaded as a party. The property in question is a free hold property. Undoubtedly, the plaintiff has prayed for mandatory injunction to direct the Estate Office to incorporate the required entry in its records, however, the relief of declaration could not be denied merely on this ground. The court may be justified in declining the relief of mandatory injunction, however, the relief of declaration which is confined inter se between the plaintiff and the defendant, has been declined on irrelevant grounds. The mutation of the property by the municipal corporation or the State Govt. is an administrative/executive function. This is for updation of the records. While entering the mutation, the revenue or Municipal or other local bodies have no right to adjudicate upon the title of the property unless specifically conferred. These authorities are required to implement the orders passed by the courts, irrespective of the fact whether they are party to the suit or not. At the cost of repetition, it may be noted that while granting declaration, the court does not pass a judgment in rem but

a judgment in personam. In other words, such a decision is only binding between the parties to the suit and persons claiming through them, respectively. Keeping in view the aforesaid discussion, it was not necessary for the plaintiff to implead the Estate Office, UT Chandigarh as a party defendant for grant of relief of declaration.

12. The next reason assigned by the First Appellate Court is equally erroneous. It is not comprehensible as to what legal procedure/formalities are sought to be escaped by the plaintiff while filing a suit for declaration. The memorandum of family settlement is a registered document. Even in the absence of registration, it is binding between the parties. The Supreme Court has always leaned in favour of holding such family settlements. It was way back in the year 1955, the Supreme Court in **Sahu Madho Dass and another vs. Pandit Mukand Ram and another AIR 1955 SC 481** recognized family settlement as an effective method of settling disputes between the parties who are family members. The entry in the revenue record or Municipal record is only considered to be an administrative/executive function. Once the document has been executed and admitted between the parties, the revenue authorities are bound to implement it unless prohibited by the law. It may be noted here that Ms. Monita Mehta, while appearing in person for herself as well as for her mother, has stated that she admits the memorandum of family settlement.

13. There was no requirement for the plaintiff to challenge the conveyance deed dated 18.01.1966 executed by the Union Territory of Chandigarh in favour of Late Sh.Kewal Krishan Mehta. The plaintiff

himself admits that the allotment of the plot was issued exhaustively in the name of Late Sh.Kewal Krishan Mehta as per the wishes of their father. Therefore, the observation of the courts below that the suit is collusive does not have any sound basis.

14. She has filed her written arguments which are extracted as under:-

“1 . The suit is bad in law since it has been filed on the misrepresentation of the so - called memorandum of Family. Settlement which has never permitted partition or division of the property in question which the appellant / plaintiff is trying to establish through this deed of settlement . The words incorporated in the document " it is hereby clarified that this is neither a deed of partition nor division " suffice the material for dismissal of the suit as well as the present appeal.

2. The Memorandum of family settlement categorically provides living arrangements for one brother i.e. Plaintiff at Chandigarh and the other for the brother i.e rental compensation respondent / defendant . The legal heirs of the appellant / plaintiff and respondent / defendant have been left to deal subsequently on their own as the arrangement has been confined to the brothers and their spouses.

3.The appellant / plaintiff has never given the rental compensation of the Manali house as provided in the document of financial arrangement in lieu of living arrangement of the appellant / plaintiff at Chandigarh in a portion of a more than three Kanal house .

4. Undoubtedly , the property in question is owned by the respondent / defendant exclusively in his own name and possessed by the respondent / defendant as the absolute owner in the record of the Estate office , Chandigarh for the last forty years . However , living rights were given to the appellant / plaintiff and his spouse as per to compensate the arrangement and financial arrangement respondent / defendant was made by the appellant / plaintiff in respect of the sharing of rental income from Manali house which absolutely belongs to the appellant.

5. No construction has taken place at the expense of the appellant .

6. The appellant and the respondent are celebrated

advocates and have authored the " Arrangement for future living between Kewal Krishan Mehta and Indar Krishan Mehta and it is not a full family settlement with a all the sons of late Shri Hans Raj Mehta participating and consenting for bequeathing the inheritance of the deceased person which may be held up in his name . The relevant portion of the document / arrangement are

" It is hereby clarified that this is neither a deed of partition nor division "

" Further , a condition is imposed on both of us that during our lifetime and that of our spouses , the aforesaid property shall not be sold off and encumbered in any manner "

" Our children may after our death deal with the same in the manner they find suitable for beneficial enjoyment in the shares we hold at present .

7. The Memorandum of family settlement is only a living arrangement for peaceful living of the brothers and after their death and expiry of their spouses , the legal heirs have been let free to deal with the properties as entered in the records . The legal heirs are not bound by the conditions of not raising loan by mortgaging and sale of property etc. as the appellant and respondent bound themselves only to avoid disturbance caused to the practicing advocates.

8. The appellant and the respondent were well versed advocates who knew the implication of every clause of the document . If they ever wanted to incorporate the clause regarding mutation of shares in the plot in question i.e. Kothi No. 81 , Sector 19 - A , Chandigarh , it would have been mentioned and got done when the arrangement was got registered .

9 . The living arrangement has been registered to avoid selling off or mortgaging etc. because it could disturb the living practising advocates . Deposits / shares of other legal heirs of the family have not been mentioned in the so - called family settlement which talks of living / financial arrangement between two brothers to be made operational unto their life or until the life of their spouses ,

10. The respondent has never asked the appellant to vacate the house but at the same time the plaintiff has never accounted for the rental sharing of the Manali house till date .

11. The Estate office Chandigarh was a necessary party because while seeking declaration the plaintiff has also sought mandatory injunction directing to have his name incorporated in the record of the Estate office qua 50 % share in the suit property .

The Estate office was a necessary party only to that extent . Otherwise the Estate office was not a necessary party . Even otherwise the appellant is a senior counsel . He was well aware that he could have filed an application under Order 1 Rule 10 CPC before the trial 8 court to get the Estate office impleaded as a party immediately after the filing of the written statement in which the counsel for the respondent had taken a preliminary objection to that effect . But the appellant did not do so .

12. The other two brothers i.e. Baldev Mehta and Ravindar Krishan Mehta are not signatories to the Memorandum of family settlement therefore they are not necessary parties .

13. The order dated 06.02.2015 in CR No. 1673 of 2015 Ex . DW 2 / A passed by this Hon'ble Court vide which the appellant's petition was dismissed because this Hon'ble Court found no merit in the appellant's case . Further the SLP No. 12911 of 2015 filed by the appellant / plaintiff challenging the order dated 06.02.2015 in CR No. 1673 of 2015 was dismissed because the Hon'ble Supreme Court found no merit in the appellant / plaintiff's case.”

15. Undoubtedly, the aforesaid memorandum of family settlement is neither a deed of partition nor a document effecting division of the property. As noticed above, the plaintiff has sought a decree of declaration that he is the owner in possession of half share in possession of the undivided property. The second argument of the counsel is a clear result of misreading and misinterpretation of the memorandum of family settlement, the execution of which is unequivocally admitted by the parties. It is evident that with respect to the suit property, it has been categorically acknowledged that this house is owned by both the brothers in equal share although the plot of the land was purchased vide registered sale deed dated 18th January, 1966 in the name of late Kewal Krishan Mehta. The plaintiff has only sought declaration to this effect. The last clause in the memorandum of

settlement only puts an embargo to any of the party to the settlement to dispose of the property during their lifetime or lifetime of their respective spouses. In fact, such condition gives an impression of deeper understanding between both the brothers. With regard to the next argument, it may be noted that the defendant is entitled to recover the amount if it has not been paid. In fact, there is abundant evidence on the record which shows that the memorandum of family settlement has been acted upon. Clause 4 of the family settlement deals with law journal Punjab Law Journal, which was owned and published by Sh. Indar Krishan Mehta. As per the family settlement, it exclusively came to the share of late Sh. Kewal Krishan Mehta. It is proved on the file that the aforesaid publication of the Law Journal with all its Goodwill, was alienated exclusively by late Sh. Kewal Krishan Mehta and his family, on receipt of valuable consideration and Sh. Indar Krishan Mehta was not paid a single penny. In such circumstances, the defendant cannot claim that the family settlement has not been acted upon. He may claim the share in rentals of property located in Manali, by filing a suit.

16. With regard to the argument No. 4, it may be noted that after the defendant has acknowledged the plaintiff to be a co-owner in equal share, there is hardly any doubt about the ownership. Next argument learned counsel representing the respondents does not need much deliberation because the plaintiff has led sufficient evidence to prove that the property on the first floor was constructed exclusively for his own use and he continues to use the same. In any case, once a memorandum of settlement has been executed in the year 2001, it is not

appropriate for the respondents to contend to the contrary. The next argument of the learned counsel representing the respondents is a result of selective reading of the memorandum of the family settlement. A document is required to be read in entirety and comprehensively before the intention of the parties to the document can be gathered. In fact, para 1 of the family settlement is clear and categoric, the defendant is admitting that the plaintiff is also a co-owner in equal share, in the property in dispute. In such circumstances, there is no substance in the argument No. 6, 7 or 8. Once the memorandum of settlement acknowledges the plaintiff to be the co-owner in equal share in possession of the suit property, the absence of clause of specific agreement would not make any difference.

17. The next argument of the learned counsel representing the respondents also does not have any substance because the plaintiff does not claim that he has been asked to vacate. He came to the court while asserting that the defendant is refusing to get the entry incorporated in the Estate Office, UT Chandigarh, acknowledging him to be co-owner. Hence, this argument has no substance. Next argument of the learned counsel is with regard to non-impleadment of the Estate Office, which has hereinbefore been examined in depth and therefore, needs no further elaboration.

18. Argument No. 12 has already been answered. The last argument of the learned counsel representing the respondent is with the reference to the observations made by the High court while deciding Civil Revision No. 1673 of 2015 on 6 February, 2015. This Court has

carefully read the aforesaid judgment. The Court was hearing a revision petition against an order passed by the trial court while deciding an application under Order 11 of the Code of Civil Procedure, 1908 for discovery by interrogatories, examination and production of the documents. The court has observed that the interrogatories served being beyond the scope of the suit, are neither necessary nor bonafide. In the considered opinion of the Court such observation does not in any way affect the decision of the case.

19. It may be noted here that the plaintiff has filed an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908, in this Court for permission to implead Baldev Krishan Mehta, Ravindra Krishan Mehta and Estate Office, UT, Chandigarh. For the reasons recorded above, prayer made in the aforesaid application does not survive. A another application filed by the appellant for grant of exemption from serving notice under Section 80 of the Code of Civil Procedure, 1908, before impleading Estate Office, UT, Chandigarh as party also does not survive for the reasons already recorded. Consequently, both the courts have erred in dismissing the suit. Hence, the Appeal is partly accepted. The plaintiff is held entitled to a decree for grant of declaration that he is the co-owner to the extent of half share of property No. 81, Sector 19 A, Chandigarh, on the basis of memorandum of mutual family settlement dated 28 February, 2001.

20. It may be noted here that though without impleading the Estate Office as party, the relief of mandatory injunction is not found maintainable, however, at the same time, the Estate Office, being a local

body is required to update the record and implement the judgments passed by the competent courts on production of certified copy of this decree/order. In other words, merely because the relief of mandatory injunction has not been granted, would not entitle the Estate Office, UT, Chandigarh, to refuse to update the entry in accordance with the judgment unless specifically prohibited by law. Before concluding this judgment, this Court is also compelled to observe that unfortunately, both the Presiding Judges of the courts below have not only failed to understand the expression “necessary party” but have travelled beyond the scope of the suit. Further, the idea that remaining two brothers may have financed the construction is mere imagination of the court which has no sound basis and such practice is deprecated. Let Registrar General of this Court forward a copy of the judgment to both the Presiding Judges.

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

25.05.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE