

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 2775 of 2001 (O&M)

Phool Singh (Since Deceased) through his legal heir and Others

... Appellant(s)

Versus

Jagpal Singh and Others

... Respondent(s)

2. Regular Second Appeal No. 2792 of 2001 (O&M)

Phool Singh (Since Deceased) through his legal heir and Another

... Appellant(s)

Versus

Jagpal Singh and Others

... Respondent(s)

AND

3. Regular Second Appeal No. 850 of 2002 (O&M)

Phool Singh (Since Deceased) through his legal heir and Others

... Appellant(s)

Versus

Jagpal Singh and Others

... Respondent(s)

DATE OF DECISION: 25.03.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr.Anish Setia , Advocate
for the appellant(s).

Mr. Amit Jain, Senior Advocate
with Mr. Dhruv Mittal, Advocate
for the respondents.

Regular Second Appeal No. 2775 of 2001 (O&M)
Regular Second Appeal No. 2792 of 2001 (O&M) AND
Regular Second Appeal No. 850 of 2002 (O&M)

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Anil Kshetarpal, J.

1. This judgment shall dispose of a set of three regular second appeals i.e. Regular Second Appeal No. 2775 & 2792 of 2001 and 850 of 2002. The parties are common and the suit property is identical. In fact, the decision of all the three appeals is dependent upon the validity and correctness of a settlement deed dated 26.07.1984.

2. In Regular Second Appeal No. 2775 of 2001, the defendants assail the correctness of the judgment, passed by the First Appellate Court on 31.01.2001. The First Appellate Court has reversed the judgment and decree, passed by the trial Court dated 27.10.1998.

3. Since there are multiple suits, therefore, to avoid confusion, the parties thereto shall be referred to by their names.

4. Late Sh. Jeetan Singh son of late Sh. Ganga Sahai filed a suit for passing a decree of possession by way of partition. He alleged that he, along with the defendants, was co-owner in the land measuring 2 kanals and 14 marlas, located in village Atterna, Tehsil Ballabgarh, District Faridabad. Sh.Phool Singh and Sh.Roshan Lal contested the suit while asserting that the suit land has already been partitioned, which was acknowledged in writing dated 08.11.1988. It was further alleged that the plaintiff has received the entire amount of compensation of his share in the Well and therefore, the defendant No.1 to 5 are the exclusive owners in possession of the land comprised in rectangle No. 37 killa No. 26 (1 kanal 14 marlas).

5. A deed of settlement dated 26.07.1984 was produced in evidence as Ex.D1. It was proved by examining a witness to the aforesaid

deed of settlement, namely Sh.Ranbir Singh (Sarpanch). It was also found that late Sh. Jeetan Singh, on receipt of an amount of ₹27,000/-, had executed a receipt Ex.D2. In the revenue record, it was found that the parties have entered into their respective possession pursuant to the partition and jamabandi for the year 1991-92 has been produced to prove that the passage is duly recorded in the revenue record. Thus, the trial Court dismissed the suit. The First Appellate Court has reversed the judgment and decree, passed by the trial Court, while recording the following reasons:-

- I) The deed of settlement dated 26.07.1984 is signed by only by one witness.
- II) The deed of settlement is only with respect to the Well and it does not mention about the partition of the whole property.
- III) No private partition is permissible.

6. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-books as well as the record, which was requisitioned.

7. The learned counsel representing the appellants (Sh.Phool Singh and Sh.Roshan Lal) contends that the First Appellate Court has misread the deed of settlement (Ex.D1). He, while drawing the attention of the Court to the deed of settlement (Ex.D1), submits that apart from late Sh. Jeetan Singh, Phool Singh and Roshan Lal, the parties to the deed of settlement, Sh.Rajinder Singh (Sarpanch), Sh.Ranbir Singh (Namberdar), Sh.Mohar Pal and Sh.Sukhram, Sh.Dharam Vir Singh, Sh.Padam Singh and

further contends that the judgment, passed by the first Appellate Court, is the result of misreading and non-reading of the deed of settlement (Ex.D1). He further submits that the private partition between the parties is not barred under the Punjab Land Revenue Act, 1887. For this purpose, he relies upon the judgment in *(Ajmer Singh v. Dharam Singh Punjab Law Reporter 2006(2) 25)*.

8. Per contra, the learned counsel representing the plaintiff (late Sh. Jeetan Singh) contends that there are multiple owners in the khata and therefore, the deed of settlement, signed by three persons, does not result in an effective partition. However, while referring to Clause (3) of the deed of settlement, he submits that the Well, in rectangle No. 37 khasra No. 26, was kept joint. He further submits that the deed of settlement is not proved because the Scribe-Sh.Ranbir Singh has not been examined. He also relies upon the report of a privately engaged Fingerprint Expert.

9. On a careful perusal of the deed of settlement (Ex.D1), it is evident that the First Appellate Court was factually incorrect while observing that it was signed only by one witness. As already noticed, there are as many as seven witnesses who have signed the deed of settlement, apart from the parties. The learned counsel representing the plaintiff (late Sh. Jeetan Singh) does not dispute this fact.

10. On a careful reading of the deed of settlement (Ex.D1), it is evident that the parties not only acknowledged the partition of the agricultural land, but also the tube-well. From further reading of Clause (1) of the deed of settlement, it is evident that the second party had agreed to

11. The aforesaid amount of ₹27,000/- had been paid vide receipt (Ex.D2), which was, again, thumb marked by late Sh. Jeetan Singh and attested by six witnesses. Late Sh. Jeetan Singh had thumb marked the receipt in a manner that half portion of his thumb impression is on the revenue stamp, whereas the remaining is on the receipt. It is also evident from the careful reading of Clause (5) of the deed of settlement, along with the note attached, that the parties intended to divide their property. Out of the joint land, the land measuring 1 kanal and 14 marlas fell to the share of Sh.Phool Singh and Sh.Roshan Lal, whereas, the land measuring 1 kanal fell to the share of late Sh. Jeetan Singh. In fact, from the reading of Clause (2) of the deed of settlement, it is evident that the party No.1 i.e. late Sh. Jeetan Singh undertook that he will not have any share in the Well, located in the rectangle No. 37 khasra No. 26 and he will not be entitled to draw water from the tube-well. In Clause (4) of the deed of settlement, it has been provided that the land underneath the Well will remain joint, but the first party will have no right to dig another tube-well.

12. It was further agreed between the parties that there would be a joint passage towards the eastern side of the land, which had fallen to the share of the first party i.e. late Sh. Jeetan Singh, comprised in rectangle No. 37 khasra No. 26.

13. The learned counsel representing the respondent (late Sh.Jeetan Singh) does not dispute that there has been a specific partition of the property and this agreement to sell is a legal settlement, which is not confined to the partition of tube-well only.

As regards the next reason, the law is well settled. There is no

bar for the parties to divide the agricultural property without any intervention of the revenue authorities or the Court. Reliance in this regard has been placed on *Ajmer Singh's case (supra)*.

15. Now this Court proceeds to analyze the arguments of the learned counsel for the respondents. With regard to the first argument, it would be noted that in the land measuring 2 kanals and 14 marlas, there were only three owners, who have partitioned the property amongst themselves. The deed of settlement is *inter se* between these three persons. Hence, this argument has no substance.

16. Clause (3) of the deed of settlement has been misread by the First Appellate Court. In fact, a perusal of the original document, it is evident that the first line of Clause (3) has been scored off and it is specifically provided in the remaining part of Clause (3) that the first party i.e. late Sh. Jeetan Singh will not be entitled to draw water from the tube-well installed in rectangle No. 37 khasra No. 26. In fact, Clause (4) of the deed of settlement provides that the land underneath the tube-well will remain joint. However, there is no clause in the deed of partition to the effect that the remaining property will continue to be joint.

17. As regards the next argument with regard to non-examination of the Scribe in the Court, it would be noticed that the deed of settlement is not required to be attested by law. Hence, it is governed by Section 72 of the Indian Evidence Act, 1872. The aforesaid document has been proved by examining the witness to the deed of settlement i.e. Sh. Rajinder Singh as DW.2. Moreover, Sh. Jagpal Singh son of late Sh. Jeetan Singh admits that

deed of settlement.

18. Hence, failure to examine the Scribe will not adversely affect the result of the suit, because there is no reason to draw any adverse inference.

19. The learned counsel representing the plaintiff (late Sh. Jeetan Singh) tried to take the benefit of the report of a privately engaged Fingerprint Expert. No doubt, under Section 45, the opinion of the Expert including the Fingerprint Expert is relevant. However, such report, if any, is not binding on the Court. Such report cannot be preferred over the direct evidence. In the present case, there is overwhelming evidence to prove the settlement between the parties. There is a written document, which was followed by a receipt. A perusal of the revenue record also proves that the deed of settlement was given effect to as the parties entered into their respective possession. Even Sh.Jagpal Singh (the plaintiff) has admitted that his family is in possession of the land measuring 1 kanal, whereas the family of Sh.Phool Singh and Sh.Roshan Lal are in possession of the land measuring 1 kanal and 14 marlas.

21. Keeping in view the aforesaid facts, the judgment passed by the First Appellate Court is liable to be set aside. Hence, the Regular Second Appeal No. 2775 of 2001 is allowed. The judgment and decree passed by the First Appellate Court is set aside and that of the trial Court is restored.

22. Sh.Phool Singh filed a suit for grant of decree of permanent injunction restraining the defendants from interfering in the right of the user of a joint passage as per Ex.D1. Ex.D1 has already been proved. As per

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passage was permitted to be used by Sh.Phool Singh and Sh.Roshan Lal. In the present case, the trial Court decreed the suit, but the first Appellate Court reversed the judgment and decree.

23. In view of the foregoing discussion, the Regular Second Appeal No. 850 of 2002 is allowed. The judgment and decree, passed by the Appellate Court is set aside and that of the trial Court is restored.

24. In the Regular Second Appeal No. 2792 of 2001, the dispute is with regard to the trees, located on the Eastern side of the common land left for the Well. The learned counsel representing Sh.Phool Singh and Sh.Roshan Lal admits that the judgment and decree, passed by the first Appellate Court is correct and he does not dispute the same. Hence, the Regular Second Appeal No. 2792 of 2001 is disposed of as such.

25. The miscellaneous application(s) pending in all the three appeals, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

March 25, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No