

111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1148-2022
Decided on : 28.07.2022

Rohit and others

..... Appellants

Versus

Satish Kumar

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. R.S.Mamli, Advocate
for the appellants.

Mr. Ajay Jain, Advocate
for the respondent.

Manjari Nehru Kaul, J.(Oral)

A suit for mandatory injunction filed by the plaintiff-respondent was partly decreed by the trial Court vide judgment and decree dated 29.09.2016. An appeal preferred by the defendants-appellants against the said decree failed and was dismissed by the Appellate Court vide judgment dated 25.02.2022. The defendants-appellants are now in Regular Second Appeal before this Court. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The pleaded case of the plaintiff was that vide allotment letter dated 31.07.2004, he was allotted a house by the Hisar Animal Husbandry Cooperative House Building Society Ltd., Sunder Nagar, Hisar (hereinafter referred to as 'Society'). After purchasing the house from one Mahavir Parsad, he paid the entire sale consideration and thereafter became owner in possession of the same. Defendants No.1 to 3 were the son, widow and

daughter of plaintiff's elder brother Bal Kishan, who expired in the year 2007. It was averred that after the death of Bal Kishan, plaintiff allowed the defendants to live in a portion of his house till some alternate arrangement was made by them. Ever since then, the defendants had been living in the house in question. However, couple of months prior to the institution of the suit, the behaviour of the defendants towards plaintiff and his family changed for the worse and they started demanding a huge sum of money from him for vacating the portion of the house where they had been living. The defendants were then asked by the plaintiff in August, 2014 to vacate the house and asked not to cause any damage to the structure of the house, however, defendants threatened to alter the nature of the portion of the house in which they were living. Plaintiff in support of his case examined PW-1 Jai Ram Dass and tendered certain documents Ex.PW-1/A (membership register) and Ex.PA (site plan).

Defendants in their written statement while refuting the averments made in the plaint submitted that there had been a family settlement-cum-partition between all six brothers of the plaintiff namely Ram Kishan, Naresh, Rakesh, Satish, Ramesh and Rohit with respect to the properties held jointly by them including the house in dispute. The family settlement-cum-partition had taken place on 30.12.2012 and duly reduced into writing. As per the settlement-cum-partition, the house in dispute, shop No.99-A, Anaj Mandi, Hisar and sum of Rs.12 lakhs were given jointly to Naresh Kumar i.e. brother of the plaintiff and defendant No.1-Rohit. Remaining properties as per the settlement fell to the shares of other brothers including the plaintiff, who agreed to pay Rs.12 lakhs to Naresh

Kumar. It was categorically denied that the plaintiff was owner in possession of the suit property and had no locus to revoke the alleged licence, which he claimed to have terminated in August, 2014 from letting the defendants to live in the house in dispute. Defendant No.1 stepped into the witness box as DW-1 and Sunil Garg as DW-2 respectively and placed reliance upon Ex.D1(settlement-cum-partition), D2, R2 (copy of agreement) and R3 (Property tax assessment report).

Upon consideration of the material and other evidence on record, both the Courts below concurrently held that the defendants were in possession of the portion of house in question as licensee and accordingly directed them to vacate the said portion of the house.

Learned counsel for the appellants-defendants while arguing reiterated the submissions made in their written statement and the stand taken before the Courts below. He urged that the Courts below failed to appreciate that the parties had acted in furtherance of the family settlement and the plaintiff had even admitted his signatures on the afore-mentioned settlement. Therefore, he could not now be allowed to take a 'U' turn and dispute the validity of the aforesaid family settlement. In support of his submissions, learned counsel has placed reliance upon the judgments of Hon'ble Supreme Court in *Narendra Kante vs. Anuradha Kante and others, 2010(1) RCR (Civil) 465, Kale and others vs. Deputy Director of Consolidation and others, 1976(3) SCC 119 and Korukonda Chalapathi Rao and another vs. Korukonda Annapurna Sampath Kumar, 2021(4) RCR (Civil) 433.*

Per contra, learned counsel for the respondent-plaintiff while

opposing the submissions made by counsel for the defendants submitted that the defendants had failed to prove the due execution of the alleged family settlement by all members of the family. He further submitted that there was no proof or material on record qua the payment of Rs.12 lakhs to Naresh or others, from which it could be inferred that the parties had acted in furtherance of the family settlement. In support, learned counsel placed reliance upon the judgment of Hon'ble Supreme Court in ***Narendra Kante vs. Anuradha Kante and others, 2010(1) RCR (Civil) 465.***

Heard learned counsel for the parties and perused the material placed on record.

The entire case of the defendants is founded upon the family settlement-cum-partition dated 30.12.2012. Therefore, it was imperative on their part to have proved its due execution. In order to prove the family settlement-cum-partition, the defendants examined Sunil Garg, scribe of the family settlement, as DW-1. The plaintiff, admitted his signatures on the family settlement, however, admittedly his brother Rakesh Kumar was not a signatory to the said family settlement. Though it was pleaded by the defendants that Rakesh Kumar brother of the plaintiff had authorized another brother, Ram Kishan telephonically to execute the family settlement on his behalf, however, the said plea stands nullified from the deposition of Rakesh Kumar, himself, who while stepping into the witness box as RW-1 categorically denied having authorized anyone much less Ram Kishan to execute the family settlement on his behalf. In the aforementioned circumstances, it cannot be said that the family settlement had been accepted by all the co-sharers. Hence, such a deed of settlement would not

be binding on the co-sharers as it was not accepted by all the stakeholders. Still further, the defendants have even failed to prove that the said deed of settlement was ever acted upon by all the brothers/co-sharers. The payment of amount of Rs.12 lakhs as per the settlement was also not proved during trial rather it was the case of defendants themselves that four brothers including the plaintiff namely Ramesh Kumar, Satish, Rakesh Kumar and Ram Kishan had instituted numerous cases to avoid the aforementioned payment. Therefore, even the case laws relied upon by the appellants-defendants would not come to their rescue as neither they were able to prove the execution of family settlement nor the said settlement being acted upon by all the other co-sharers. In the circumstances, since the defendants failed to prove their case on both the above counts, the concurrent findings arrived at by both the Courts below cannot be faulted with.

Upon being pointedly asked, learned counsel for the appellants-defendants has failed to bring to the notice of this Court anything on record from which it could be shown that the conclusions arrived at by the Courts below were contrary to the record or suffered from any material irregularity.

In the circumstances, this Court does not find any error with the concurrent findings recorded by both the Courts below. The appeal being devoid of any merit, stands dismissed accordingly.

(MANJARI NEHRU KAUL)
JUDGE

28.07.2022

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No