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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3904-2019 (O&M)
Date of decision : 10.05.2022

Murti Devi and Others .....Appellants

Versus

Sajjan Pal Singh and Another .....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajender Singh Malik, Advocate for the appellants.

ALKA SARIN, J.

CM-10514-C-2018

This is an application for condonation of delay of 18 days in filing the appeal.

For the reasons stated in the application, the delay of 18 days in filing the appeal is condoned.

CM stands disposed off.

RSA-3904-2019

The present regular second appeal has been preferred by the plaintiff-appellants against the judgments and decrees passed by both the Courts below.

Brief facts relevant to the present *lis* are that the plaintiffs filed a suit for declaration and permanent injunction averring in the plaint that one Lakhi Ram was owner to the extent of half share and Kishna and Risalo, son

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and daughter respectively, of Hari Ram were owners to the extent of other half share in residential house comprised in Khewat No.38, Khata No.65, Rectangle and Killa No.108 measuring 16 Marlas i.e. 484 sq. yards fully shown in the site plan marked by letters ABCD. The case set up by the plaintiff-appellants was that on 26.03.1975, Kishna and Risalo mortgaged with possession their half share in favour of Surat Singh and Sher Singh sons of Lakhi Ram for a consideration of ₹3,000/- and it was stated that the property would be redeemed within a period of one year and in default the property would be considered as sold and the mortgagees would automatically become owners of the said property. It was further the case that since the property was not redeemed, Sher Singh and Surat Singh became owners of the mortgaged property. It was further the case in the plaint that Lakhi Ram, in order to give equal shares to his sons, made a family settlement in June 1977 wherein it was orally settled that the property situated at Sonepat would be given to Sher Singh i.e. predecessor-in-interest of defendant-respondents and the property situated in the village Hasanpur would be given to Surat Singh, predecessor-in-interest of the plaintiff-appellants. It was further the case that the settlement was arrived at in the presence of Kartar Singh son of Chhattar Singh and Randhir Singh son of Jai Lal and in view of the settlement the predecessor-in-interest of the plaintiff-appellants i.e. Surat Singh became exclusive owner in possession of the suit property. It was further the case that on 29.07.1977 the family arrangement made earlier was reduced into writing and the share of Sher Singh in the suit property came to the share of predecessor-in-interest of the plaintiff-appellants i.e. Surat Singh. It was further the case that on 12.05.2013 a public meeting was convened between village Sarpanch and other

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respectables of the village and it was declared that as per the oral settlement between Lakhi Ram, Surat Singh and Sher Singh, the suit property had fallen to the share of the predecessor-in-interest of the plaintiff-appellants i.e. Surat Singh. On notice, written statement was filed by the defendant-respondents wherein it was stated that the suit property was jointly owned and possessed by the parties along with other co-sharers who had not been impleaded as a party. The factum of any family settlement was denied. It was further stated that Sher Singh, the predecessor-in-interest of the defendant-respondents, had purchased half share of the property at Sonepat from Surat Singh, predecessor-in-interest of the plaintiff-appellants, for a valuable consideration of ₹600/- vide registered sale deed dated 17.08.1977.

On the pleadings of the parties, the following issues were framed :

1. Whether the plaintiffs are entitled to a decree for declaration as prayed for ? OPP
2. Whether the plaintiffs are entitled to a decree for permanent injunction whereby defendants are restrained from dispossessing the plaintiffs over the suit property as mentioned in para No.1 of the plaint ? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
4. Whether the suit of the plaintiffs is bad for non-joinder of necessary parties ? OPD
5. Whether no cause of action has arisen to the plaintiffs to file the present suit ? OPD

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6. Whether the plaintiffs have no locus standi to file the present suit ? OPD

7. Relief.

The Trial Court, vide judgment and decree dated 18.05.2016, dismissed the suit of the plaintiff-appellants on the ground that the entire case was based on oral settlements and oral partition. It was further held that Lakhi Ram had left a Will (Ex.D3) which had never been challenged by either of the parties as also the sale deed (Ex.D1) executed by the predecessor-in-interest of the plaintiff-appellants, Surat Singh, transferring his half share of 180 sq. yards in Sonepat in favour of predecessor-in-interest of the defendant-respondents, Sher Singh, for a valuable consideration of ₹600/-. Qua the written family settlement, it was held that the scribe PW6, Mahabir Parsad Jain, had stated that the parties who had appeared before him were not identified by any Namberdar and that he could not tell that the parties who were present at the time of agreement dated 29.07.1977 (Ex.PW6/A) were Sher Singh and Surat Singh. The Trial Court further held that it was an undisputed fact that Lakhi Ram had left a Will which was never challenged by any of the parties. Aggrieved by the said judgment and decree passed by the Trial Court, an appeal was preferred by the plaintiff-appellants, which also met with the same fate. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellants has contended that there was an oral family settlement whereafter it was reduced into writing on 29.07.1977 vide Ex.PW6/A and on the basis of the said agreement the predecessor-in-interest of the plaintiff-appellants (Surat Singh) had become owner of the suit property. Learned counsel for the plaintiff-appellants has

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further contended that the predecessor-in-interest of the defendant-respondents (Sher Singh) was given an equal share in the property at Sonepat which Surat Singh transferred in the name of Sher Singh. It was argued that the defendant-respondents after getting the property exclusively in Sonepat were bent upon to deprive the plaintiff-appellants of the property in the village i.e. the suit property. According to counsel, the evidence available on the record proved that the plaintiff-appellants were in possession of the suit property and as such their possession ought to have been protected. He argued that the family settlements stood proved and it was for the defendant-respondents to prove that no family settlements had taken place. Learned counsel also contended that the Courts below ought not to have taken into consideration the Will of Lakhi Ram which was never proved. He also argued that since the defendant-respondents did not lead any cogent evidence, the Courts below ought to have decreed the suit of the plaintiff-appellants. Lastly it was contended that the lower Appellate Court erred in dismissing the application for additional evidence which was filed by the plaintiff-appellants.

I have heard learned counsel for the plaintiff-appellants and perused the paper book.

In the present case the plaintiff-appellants have approached this Court placing the reliance on an oral family settlement of 1977 which was reduced into writing on 29.07.1977 (Ex.PW6/A) to state that Sher Singh had relinquished his right, title and interest in the suit property in favour of Surat Singh and Surat Singh in return had relinquished his share in the property situated at Sonepat in favour of Sher Singh. The father of Surat Singh and Sher Singh i.e. Lakhi Ram had transferred his 1/2 share in favour of Surat

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Singh in the family settlement of 1977. However, counsel for the plaintiff-appellants has been unable to explain as to why Surat Singh had to execute a sale deed dated 17.08.1977 (Ex.D1) qua his share in the Sonepat property in favour of his brother Sher Singh if he had already relinquished this very share in favour of Sher Singh in a family settlement which had been reduced into writing before the execution of the sale deed. The date of the written family settlement is 29.07.1977 while the date of the sale deed is 17.08.1977. Further, it is unexplained as to why if Sher Singh got the Sonepat property from his brother Surat Singh vide a sale deed, why no document was executed by him (Sher Singh) in favour of his brother Surat Singh qua the suit property. Further, learned counsel for the plaintiff-appellants has not been able to explain as to why Lakhi Ram did not amend or cancel his Will after the family settlement of 1977 when he was no longer left with any right, title or interest in his 1/2 share of the suit property since it had allegedly gone to the share of Surat Singh in the family settlement. Lakhi Ram remained alive for almost five years post execution of the alleged family settlement on 29.07.1977. There is also no explanation forthcoming as to why from 1977, when the alleged settlement is stated to have taken place, no action was taken by the plaintiff-appellants to get the suit property mutated in their names. Even after the death of Lakhi Ram in 1982, no effort was made to get the suit property mutated in the names of the plaintiff-appellants.

In the suit, a declaration has also been sought that the plaintiff-appellants and LRs of Jai Chand (son of Surat Singh) are co-owners to the extent of 1/3 share each in the portion marked ABFEGC. The said LRs of Jai Chand are not parties to the suit. The daughters of Surat Singh are also not

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parties to the suit.

Learned counsel for the plaintiff-appellants has been unable to explain as to why the application for production of additional evidence was filed at a very belated stage at the time of appeal before the lower Appellate Court. The plaintiff-appellants cannot be allowed to improve their case by producing documents in additional evidence without any plausible explanation as to why they were not produced at the time of trial.

No question of law, much less, any substantial question of law arises in the present case. Both the Courts below have recorded concurrent findings of fact warranting no interference by this Court.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

It is clarified that the dismissal of this appeal and the suit of the plaintiff-appellants would not tantamount to them being deprived of their share in the suit property as successors-in-interest of Lakhi Ram and Surat Singh.

10.05.2022 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No

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