

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

239

**RSA-3213-2014 (O&M)
Decided on : 22.03.2022**

Subhash Chander

... Appellant(s)

Versus

Manohar Lal and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. S.K. Kaushik, Advocate
for the appellant(s).

Mr. Deepak Girhotra, Advocate
for respondent No.2.

Mr. J.S. Khattar, Advocate
for respondent No.4.

MANJARI NEHRU KAUL, J.

Appellant/Plaintiff – Subhash Chander has filed the instant Regular Second Appeal (RSA) after having lost in both the Courts below. Parties to the *lis* hereinafter shall be referred to by their original position in the suit.

Appellant/plaintiff had filed a suit for partition against the respondents/defendants for seeking separate possession by way of partition of the suit property i.e. house bearing MCK No. 2105/1, situated at Arjun Nagar, Kaithal in view a family settlement dated 09.09.1998.

In brief, the case set out by the plaintiff was that the properties of the family were partitioned including the suit property on the basis of a family settlement between the plaintiff and respondents/defendants No.1 & 3 and their deceased mother – Parwati Devi, which was also later on reduced into writing vide Memorandum of Family Settlement dated

09.09.1998. The family partition was acted upon and as per it, the parties started residing in their respective properties. The appellant/plaintiff and respondent/defendant No.1 even deposited Rs. 50,000/- each in the shape of FDRs in the Punjab National Bank for the benefit of their mother. The suit property was to be divided only between appellant/plaintiff and respondent/defendant No.1. Respondent/defendants No.2 to 4, who had no right, title or interest in the suit property. However, respondent/defendant No.1 inducted respondent/defendant No.4 (cross objector), as tenant without his consent. Since, the appellant/plaintiff asked for his share in the suit property after the death of his mother Smt. Parwati Devi on 25.02.2001, the respondent/defendant No.1 refused which led the appellant/plaintiff to institute the suit in question

On being put to notice, defendants/respondents No.1, 2 & 4 appeared while defendant/respondent No.3 remained *ex-parte*. Defendant/respondent No.1 was also later on proceeded against *ex-parte*. The remaining defendants/respondents while filing their written statements submitted that the suit property was purchased by Smt. Parwati Devi widow of Bahadur Chand, grandmother of defendant No.2 from its previous owner i.e. defendant No.4 vide registered sale-deed bearing registration No. 3714/1, dated 29th August, 1991 and had rented out the same to defendant No.4 herself. It was also submitted that Smt. Parwati Devi had executed her last registered Will bearing registration No. 183/3, dated 16.01.2001 during her lifetime out of her free will and consent, in favour of her grandson i.e. respondent/defendant No.2 and had also transferred the suit property by way of Will dated 16.01.2001 in his favour. It was also submitted that the existence of the said Will as well as the factum of the execution of said Will

in favour of defendant No.2 was well within the knowledge of the plaintiff/appellant, however, during the lifetime of Smt. Parwati Devi, he had raised no objection to the same. It was denied that any family settlement as claimed by the appellant/plaintiff ever took place by submitting that had it been so, Smt. Parwati Devi would not have executed the Will dated 16.01.2001 in favour of defendant No.2.

Defendant No.4 (cross-objector) submitted that after the execution of sale-deed dated 29.08.1991 in favour of Smt. Parwati Devi, the possession of the suit property was not delivered by him to anyone and had rather, always remained with him. He, thus, based his claim over the suit property on the basis of adverse possession.

Learned Civil Judge (Jr. Divn.) Kaithal, vide judgment & decree dated 23.11.2011, dismissed the suit of the plaintiff. The first appeal preferred by the plaintiff was also dismissed by the learned Addl. District Judge, Kaithal, vide judgment & decree dated 10.02.2014. Feeling aggrieved, the plaintiff filed the instant second appeal.

Learned counsel for the plaintiff *inter alia* contended that both the Courts below erred in discarding the family settlement (Ex.P5) by holding that it did not stand proved that any family settlement, as claimed, had been arrived at. It was submitted that the lower Courts also fell into error by losing site of the fact that FDR in the sum of Rs. 1,00,000/- had been made in favour of Smt. Parwati Devi i.e. mother of the plaintiff as well as respondent No.1 for her maintenance, as per the second condition of the family settlement. In support, he placed reliance upon **Mithu Ram vs. Shiv Nath, 2011(2) PLR 756** and **Ram Dass vs. Tek Chand, 2007(5) RCR(C)**

664. It was also submitted that Smt. Parwati Devi was 90 years of age and

hence, it was unlikely that she could have executed the Will, on the basis of which, defendant No.2 had acquired the suit property.

Learned counsel for the respondent while controverting the submissions of the appellant/plaintiff, argued that firstly the family settlement, as claimed by the appellant/plaintiff, was not proved as per law. It was also submitted that the registered sale-deed was in the name of only Smt. Parwati Devi and hence, she was competent to execute the Will, which was duly proved and upheld by both the Courts below and secondly, there was no bar for the executant of the Will i.e. Smt. Parwati Devi to give the property to a person of her choice and thus, she gave it to defendant No.2, who is her grandson.

I have heard learned counsel for the appellant/plaintiff and perused the relevant record.

The suit property was purchased by the mother of the appellant/plaintiff and defendant No.1 from defendant No.4 by way of a registered sale-deed bearing No. 3714/1, dated 29.08.1991. A registered document carries more presumption of truth as compared to the oral claim of the plaintiff that he along with defendant No.1 had purchased the suit property in the name of their mother Smt. Parwati Devi. Not only this, it is also not disputed that the alleged family settlement was not registered. The contention of the plaintiff that Smt. Parwati Devi was 90 years of age at the time of the execution of the Will, would not come to his rescue, because no evidence has been led to show that Smt. Parwati Devi at the time of the execution of the Will was not in a sound state of mind or health. Onus was on the plaintiff to prove otherwise, which he failed to discharge. Though it is the case of the plaintiff that the suit property was purchased by him and

his brother (defendant No.1) from their own funds in the name of their mother, no evidence *qua* the same was brought on record by the plaintiff. Even otherwise, the said transaction would be hit by the provisions of the Benami Transactions (Prohibition) Act, 1988. It would also not be out of context to observe that the plaintiff did have the knowledge about the existence of the Will, on the basis of which, defendant No.2 had got his name entered in respect of the suit property in the Municipal records, because he admitted so during his evidence before the trial Court. The case laws on which reliance has been placed by the learned counsel, is not applicable to the facts of the instant case.

On being pointedly asked, learned counsel for the appellant/plaintiff could not refer to anything on record to show that the conclusions arrived at, by both the Courts below, were contrary to the record or suffered from any material illegality. Thus, no ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

(MANJARI NEHRU KAUL)
JUDGE

March 22, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*