

**RSA-6409-2014(O&M)
and connected case**

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

1.RSA-6409-2014(O&M)

Jaininder Kumar Jain

....Appellant

Versus

Ashok Kumar Jain

..Respondent

2.RSA-6463-2014(O&M)

Jaininder Kumar Jain

....Appellant

Versus

Ashok Kumar Jain

..Respondent

Date of decision:16.08.2022

Reserved on: 29.07.2022

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Baldev Raj Mahajan, Senior Advocate with
Mr. Sandeep Jain and Ms. Baani Chibber Mahajan
Advocates for the appellant

Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Gopal Soni, Advocate for the respondent

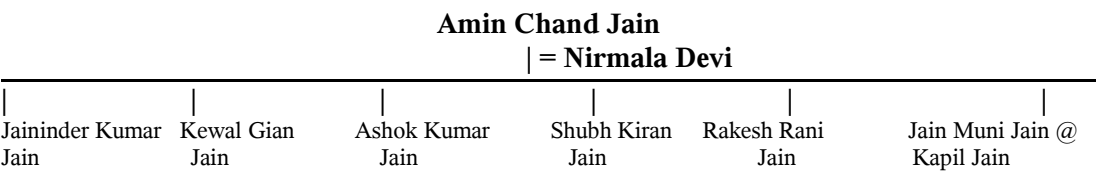
ANIL KSHETARPAL, J

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh are governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in

Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6

SCC 157.

2. While assailing the correctness of the findings of facts arrived at by the appellate court, the plaintiff has filed the present appeal. A small pedigree table, as drawn below would facilitate to understand the inter se relationship between the parties:-



3. The dispute is with respect to first floor of H.No.114, Sector 4, Panchkula. The plaintiff in the suit was late Sh.Jaininder Kumar Jain, now represented by his L.Rs whereas defendant is his brother Sh.Ashok Kumar Jain. The plaintiff claiming to be the owner of the property prayed for a decree of mandatory injunction directing the defendant to return the possession of the premises on the ground that the licence in his favour stands terminated. The defendant, on the other hand, contested the suit while asserting that he is the owner in possession of the first floor of the premises.

4. It has come in evidence that the plot no.114, Sector 4, Panchkula was allotted on 14.08.1973 to the plaintiff Late Sh.Jaininder Kumar Jain and a conveyance deed in his favour was executed after payment of the price of the plot in instalments on 07.08.1981. The plaintiff claims that after constructing ground floor as well as first floor of the premises, he has permitted the defendant to reside on the first floor.

5. On the other hand, the defendant while filing the counter

claim, claimed to be owner in possession of the First Floor of the house. He submits that initially there was a family settlement dated 23.03.1988 and thereafter another deed was signed on 18.08.1993 which accidentally got damaged while washing the trousers. Ultimately, on 28.10.1993 a new deed was signed by the parties.

6. The trial court, after appreciating the evidence, held that the alleged family settlement dated 28.10.1993 has not been acted upon in view of the findings arrived at in the previous suit between Jain Munni Jain and Jaininder Kumar Jain in the judgment and decree dated 13.01.2005 which has been upheld upto the High Court. The court also held that the property is not proved to be Joint Hindu property and the deed of family settlement dated 28.10.1993 being unregistered is not admissible in evidence.

7. The First Appellate Court, after re-appreciating the evidence, accepted the defendant's appeal against which these two appeals have been filed.

8. Heard learned counsel representing the parties at length and with their able assistance perused the judgments passed by the courts below as well as their records, which were requisitioned.

9. Learned counsel representing the appellant contends that there is no evidence on the record to prove the existence of Joint Hindu Family. He submits that late Sh. Amin Chand Jain, predecessor of the parties was serving in the High Court as an employee and the plot in question was allotted in favour of the plaintiff on 14.08.1973 exclusively. It has come on record that each child, after getting married,

started residing in separate portions of the same house. He submits that mere evidence of the family living together is not sufficient to draw a presumption that the property is also joint, particularly when even the alleged family settlement does not refer to the existence of Joint Hindu Family. He further submits that there is ample evidence to prove that the plaintiff exclusively purchased and constructed H.No.114, Sector 4, Panchkula. While referring to the statement of Sh. Ashok Kumar Jain and various other documents, he submits that the plaintiff constructed the ground floor as well as the first floor. He further submits that the other brothers are living separately and own their own exclusive properties. While referring to the judgment and decree passed on 13.01.2005, 29.03.2005 and 23.04.2007, he submits that the settlement deed dated 28.10.1993 was never acted upon. He further submits that there is evidence to prove that the plaintiff took successive loans in order to complete the construction as, initially, he took an advance of Rs.60,000/- vide Ex.P7 on 16.06.1981. Thereafter, Rs.48,300/- on 22.06.1981 and thereafter, he took additional House Building advance of Rs.9000/- on 27.09.1984 and Rs.22,400/- on 13.05.1993 and he repaid the loan from his salary. In the end, he submits that the family settlement Ex.P4 requires registration, therefore, the First Appellate Court has erred in accepting the appeal. On the other hand, learned counsel representing the defendant contends that the family settlement dated 28.10.1993 is admitted by the plaintiff, though, he changed his stand multiple times. He submits that not only the deed dated 28.10.1993 has been implemented but it is also proved that the defendant

had exclusively constructed the first floor of the premises and is residing therein alongwith his family without any interruption.

10. As regards the first argument of learned senior counsel for the appellant, though there is some substance, however, the deed of family settlement was, admittedly, executed by the parties. Hence, it is considered appropriate to extract the same because this is the most important piece of evidence in the case:-

“AGREEMENT DEED

“This deed is executed on the 28th day of October, 1993 between Jaininder Kumar Jain (hereinafter referred to as 1st party), Jain Muni Jain (hereinafter referred to as 2nd party) and Ashok Kumar Jain (hereinafter referred to as 3rd party), all sons of Shri Amin Chand Jain and are residents of House No.114, Sector 4, Panchkula.

Whereas, Jaininder Kumar Jain, 1st party purchased the above plot from Haryana Urban Development Authority, Panchkula in his name.

Whereas 1st and 2nd party promise to pay in the same terms the subsequent instalments to the extent of half and half to clear off the loans raised for the construction of the house built thereon.

Whereas the first front portion of the ground floor and the entire above portion of 2nd floor will remain in possession of 1st party, the other half back portion including garage of the ground floor will remain in possession of 2nd party.

Whereas, the room above the garage of the first floor will be utilized by both the mother and father of the above three parties namely, Nirmala Devi and Amin Chand Jain during their life tenure and afterwards he or she are entitled to give the same to any of the above three parties.

Whereas, Ashok Kumar Jain, the 3rd party is given the possession of the first floor and is entitled to raise construction. The first floor construction shall be the exclusive ownership of the 3rd party.

Whereas the, 1st and 2nd parties shall not raise any objection for the use of staircase and by the 3rd party for ingress and egress to the first floor.

This family settlement is being written in this present form for the purpose of memory. This

agreement has been entered into between the parties on the date mentioned above.”

11. On a careful reading of the settlement, it is evident that it was signed on 28.10.1993 by Jaininder Kumar Jain, Jain Muni Jain and Ashok Kumar Jain, all sons of late Sh.Amin Chand Jain. As per the settlement, the defendant (respondent herein) - Ashok Kumar Jain was authorized to construct the First Floor of the house in question and was given exclusive rights in it. Sh.Jain Muni Jain had independently promised to pay subsequent instalments to the extent of half and half to repay the loans raised for the construction of the house built on the ground floor. At that time, it was agreed that the front portion of the ground floor and entire portion of the second floor will remain with Jaininder Kumar Jain whereas the other half portion including the garage on the ground floor will remain in possession of Jain Muni Jain. It is also evident that there was a room constructed above the garage on the first floor, which was being used by the parents of the parties. Thus, it is evident that till 1998 the complete first floor of the house was not constructed. When the plaintiff appeared in evidence, he admitted his signatures on the second page of the aforesaid deed, however, stated that the recitals in the document are not in accordance with the disclosure made by his father. He claimed that the aforesaid writing was executed only to avoid conflict between the remaining brothers though it was not meant to be acted upon. As already noted, there are as many as three settlements between the parties. Hence, the allegation that this document was not executed, only for the time being, in order to resolve

the immediate dispute between the parties cannot be accepted. This document proves that the parties did resolve the dispute.

12. Both the sisters of the parties have appeared in evidence and proved the deed of settlement. The plaintiff also admits its execution. Hence, the next question which arises is as to whether it requires registration. Undoubtedly, Ex.P4 is not in the form of a memorandum. However, it has come in evidence that there were a series of settlements. Thus, it is evident that the settlement had taken place earlier, subsequently, however, it was reduced into writing. It has come in evidence that the family settlement was acted upon atleast between the plaintiff and the defendant, particularly when it is proved that the defendant had constructed the building and continues to reside therein without any interruption or dispute till the filing of the suit. It may be noted here that though there was litigation between the plaintiff and Jain Muni Jain, however, the defendant was not a party thereto. The defendant alongwith his family continued to reside on the First Floor of the house and the plaintiff never objected to the same during all these years until the filing of the present suit i.e in February, 2008. Thus, over the period of 15 long years, the plaintiff never objected to the exclusive possession of the first floor with the defendant. Reliance in this regard can be placed on the judgment passed by the Supreme Court in **Kale vs. Deputy Director, Consolidation, AIR 1976 SC 807** wherein the court held that once a family settlement has arrived at and acted upon, the parties are estopped from questioning its correctness. The courts have always leaned in favour of upholding the family settlement which has

been arrived at in order to resolve the dispute between the various family members. Furthermore, as already noticed, the first settlement was in the year 1988, the second settlement was arrived at in August, 1993 whereas the third settlement Ex.D4 was arrived at 28.10.1993. Hence, the document does not require registration.

13. The next argument of the learned counsel representing the appellant is with reference to the judgment passed by the courts while returning a finding that the family settlement Ex.D4 has not been acted upon. It may be noted here that defendant is not a party to the aforesaid suit. Hence, the relevancy of the aforesaid judgment is required to be examined in context of Section 40, 41, 42 and 43 of the Indian Evidence Act, 1872. Section 40 makes such judgments relevant which give effect to the rule of res judicata, however, it is not applicable in the present case because the defendant was not a party. Section 41 relates to the relevancy of the judgment, order or decree passed by a competent court in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which is not the case herein. Section 42 relates to any judgment, order, or decree other than those mentioned in Section 41, which are relevant if they relate to matters of public nature, relevant to the matter under inquiry in the given case, however, no such question is involved herein. Section 43 clearly provides that all other judgments are irrelevant unless relevant under any other provision of the Indian Evidence Act, 1872. Hence, the findings in the previous litigation do not come to the rescue of the appellant. It may be further noted here that on careful reading of the deed of settlement, it is evident that the share of

the defendant is not dependent upon the share of Jain Muni Jain. The defendant has been given independent right to construct the building on the first floor. It is specifically recited that the first floor construction would exclusively belong to Sh.Ashok Kumar Jain. Hence, the judgments passed in the previous suit are not binding.

14. The last argument of the learned counsel is with regard to the loan having been taken by the appellant for construction on various occasions. It is evident that the aforesaid loan was for repair of the house and it was not for construction on the first floor. In the year 1993 Rs.22,400/- were taken as loan for repair of the house. This loan was sanctioned before the settlement was arrived at. The plaintiff has failed to prove that he constructed the first floor. The defendant has led ample evidence to prove that the first floor was constructed by him.

15. The last argument of the learned counsel representing the appellant is with regard to purchase of plot no.114 exclusively. This Court is not inclined to discuss the aforesaid argument in detail, particularly when it has been proved that though the plot was allotted to the plaintiff individually, however, a family settlement was arrived at between the family members which has been acted upon. The First Appellate Court has given a detailed and elaborate judgment after appreciating the evidence. Learned counsel representing appellant has failed to draw the attention of this Court to any evidence to prove that the conclusion drawn by the First Appellate Court is either a result of misreading of evidence or wrong interpretation of law. Hence, finding no merit, both the appeals are dismissed.

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

16.08.2022
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No