

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

RSA-1328-1991

Reserved on: 06.09.2023

Date of decision: 13.09.2023

SADHU RAM & ORS.**..Appellants****Versus****KHUSHI RAM (DECEASED) THROUGH LRS. & ORS.****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Rajinder Goel, Advocate
for the appellants.

Mr. R.A. Yadav, advocate
& Mr. Sandeep Yadav, Advocate
for respondent No.1, 2 and 4.

ANIL KSHETARPAL, J.

1. This is plaintiff's appeal against the judgment and decree passed, on 02.08.1990, by the First Appellate Court, whereby, the judgment and decree passed on 25.02.1989 by the Court of first instance was set aside and the plaintiffs were declared the owner to the extent of 1/4th share in the property. However, the First Appellate Court held that the suit filed by the plaintiffs has no substance and the trial Court has erred in decreeing the suit.

2. In order to comprehend the issue, which requires adjudication in this case, the relevant facts, in brief, are required to be noticed.

3. It is the admitted case of the parties that originally the property was in the hands of Sh. Chunni Lal. He had four sons and two daughters namely Sh. Khem Chand, Sh. Khushi Ram, Sh. Ram Kumar, Sh. Tara Chand and two daughters. He was owner of the suit land. Sh. Khushi Ram,

Sh. Ram Kumar and Sh. Tara Chand filed a suit alleging that two years before the filing of the suit in a family settlement Sh. Chunni Lal, their father acknowledged them to be the owner of the property as the rights of Sh. Khem Chand were settled by handing over family jewellery along with cash. Sh. Chunni filed admitting written statement and the suit was decreed on 14.06.1983. That decree is subject matter of challenge in this litigation as Khem Chand on 25.11.1983 filed a separate suit. The plaintiffs claimed that the suit property is ancestral and Sh. Chunni Lal could not alienate the same by way of a collusive decree. It was further contended that there was no family settlement between the various family members.

4. On the other hand, Sh. Chunni Lal as well as his three sons namely Sh. Khushi Ram, Sh. Ram Kumar and Sh. Tara Chand jointly contested the suit by filing a joint written statement. It was alleged that the suit is not maintainable as the previous suit filed by the plaintiff-Sh. Khem Chand on the same plea had already been dismissed vide judgment and decree dated 09.04.1979. DW-2 Sh. Chunni Lal appeared in evidence and stated that Sh. Khem Chand was in employment and was separately residing for the last 35 years.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

6. The learned counsel representing the appellants submits that from the reading of the plaint in the previous suit as well as the deposition of Sh. Khushi Ram, who appeared as DW-3, it is evident that he, Sh. Ram Kumar and Sh. Tara Chand had in fact paid the money and therefore, purchased the property. He submits that such transaction was required to be registered before ownership is transferred. He submits that in fact it

amounts to the sale of the property and therefore, the decree dated

14.06.1983 was correctly set aside by the trial Court.

7. On the other hand, the learned counsel representing the respondents submits that on a careful reading of the statement of Sh. Chunni Lal, it is evident that Sh. Khem Chand separated from the family 35 years before the filing of the suit. Moreover, it has been stated that the entire family jewellery was handed over to Smt. Kamla wife of Sh. Khem Chand and Sh. Khem Chand after selling the same has already purchased separate parcel of land 7-8 months back. He further submits that in a family settlement not only the jewellery was handed over to Sh. Khem Chand but certain amount in cash was also paid. He submits that such settlement is permissible in law and it does not amount to sale of the property. He further relies upon the judgment passed in Civil Suit No. 253 of 1977 decided on 09.04.1979 (Khem Chand Vs. Chunni Lal) (Ex.P-2).

8. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties. The judgments passed by the Courts below and the requisitioned record of the trial Court has also been examined.

9. First of all, it is important to note that Sh. Khem Chand filed Civil Suit No. 253 of 1977 claiming that he has 1/7th share in the suit land as the property is ancestral and coparcenary property and defendant No.1 (Sh. Chunni Lal) has no right to alienate the same. The aforesaid suit was dismissed on 09.04.1979. In this suit, the Court held that the plaintiff (Sh. Khem Chand) failed to prove that the suit property is coparcenary or ancestral. The Court only held that members of joint hindu family are not separate in estate. The learned counsel representing the appellants does not dispute that Civil Suit No. 253 of 1977 was with respect to the property in

dispute.

10. Secondly, it is important to note that Sh. Khem Chand was in employment. This fact has been stated by Sh. Khushi Ram while appearing as DW-3. The learned counsel representing the plaintiffs (appellants) did not cross-examine the witness on this aspect. It has also been stated by Sh. Chunni Lal, the father of the parties that Sh. Khem Chand separated from the family 35 years ago. He specifically stated that he is residing separately from his family for the last 35 years. Moreover, in a family settlement, one of the party has been handed over family jewellery and some amount of cash to compensate him adequately. Even if some amount was contributed by Sh. Khushi Ram, Sh. Ram Kumar and Sh. Tara Chand still the same would not amount to sale of the property. The Courts always leans in favour of upholding the family settlement. Moreover, Sh. Chunni Lal has stated that Sh. Khem Chand has already purchased the property after selling the family jewellery.

11. Keeping in view the aforesaid discussion, it is evident that the appeal lacks merit.

12. Hence, dismissed.

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

September 13th 2023

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No