

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RSA-527-1992 (O&M)
Reserved on: 19.09.2023
Date of decision: 08.01.2024

RAJBIR SINGH (DECEASED) THROUGH LR
Versus
..Appellant

KANHIYA LAL(DECEASED) THROUGH LRS AND ANOTHER
..Respondents
2. RSA-528-1992 (O&M)

RAJBIR SINGH (DECEASED) THROUGH LR
Versus
..Appellant

KANHIYA LAL(DECEASED) THROUGH LRS AND ANR.
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.B. Sharma, Advocate
for the appellant.

Mr. A.P. Bhandari, Advocate
for the respondents.

ANIL KSHETARPAL, J.

1. With the consent of the learned counsel representing the parties, two connected regular second appeals arising from a common judgment passed by the First Appellate Court shall stand disposed of by a common judgment.
2. In order to comprehend the issue involved in these two regular second appeals, the relevant facts, in brief, are required to be noticed.
3. Sh. Rajbir Singh (appellant) filed civil suit No.497 of 1985 against Sh. Sohan Pal and Sh. Kanhiya Lal sons of Sh. Bhim Sen for grant

of decree of permanent injunction restraining the defendants from interfering into his possession. It is the case of the plaintiff that Sh. Sohan Pal (defendant No.1) agreed to sell 1 kanal and 10 marlas land comprised in Khasra No.15/1 in his favour vide agreement to sell dated 15.04.1978. The entire sale consideration of Rs.22,00,700/- was paid and it was agreed that the sale deed would be executed within a period of two years from the date, the litigation between Faridabad Complex Administration Vs. Sohan Pal is decided. It was alleged that the aforesaid litigation has been decided but the plaintiff has never been informed, whereas, now the defendants No.1 and 2 namely Sh. Sohan Pal and Sh. Kanhiya Lal sons of Sh. Bhim Sen are threatening to interfere. Sh. Sohan Pal did not contest the suit, whereas, Sh. Kanhiya Lal filed written statement. It is submitted that both the brothers namely Sh. Sohan Pal and Sh. Kanhiya Lal were joint owners and they entered into a settlement on 10.05.1972, according to which portion 'A', 'E', 'F' & 'C' fell to the share of Sh. Kanhiya Lal, whereas, the remaining portion 'A', 'B', 'C' & 'D' fell to the share of Sh. Sohan Pal. In the portion, which fell to the share of Sh. Kanhiya Lal, he has raised certain construction. Faridabad Complex Administration sought ejectment of defendant No.1, which was dismissed. Sh. Sohan Pal also filed a suit for partition of land comprised in Khasra No.1/15/6, which was contested by Sh. Kanhiya Lal on the basis of the settlement deed dated 10.05.1972. Ultimately, the aforesaid suit was dismissed. In civil suit No.54 of 1983, the parties entered into settlement on 26.02.1983, and hence the suit of Sh. Sohan Pal was decreed only to the extent of portion 'A', 'B', 'C' & 'D'. The second suit was filed by Sh. Kanhiya Lal against Sh. Sohan Pal and Sh. Rajbir. Sh. Kanhiya Lal claims that he is owner in possession of land comprised in portion 'A', 'E', 'F' & 'C', which measures as per the description North-62 ft., South-72 ft, East-

58 ft. & West-41 ft. This case was contested by Sh. Sohan Pal, who claimed that Sh. Rajbir Singh has now become the owner of the property pursuant to agreement to sell dated 15.04.1978. Defendant No.2 Sh. Rajbir Singh has also filed similar written statement.

4. On appreciation of evidence, the learned trial Court found that the agreement to sell dated 15.04.1978, allegedly executed by Sh. Sohan Pal in favour of Sh. Rajbir Singh has been ante-dated in order to frustrate, the settlement arrived at between the parties between 10.05.1972 as well as decree dated 26.02.1983. It was also held that the stamp paper on which the agreement to sell is written/scribed, was purchased only for the execution of an affidavit. Thus, the suit filed by Sh. Rajbir Singh was decreed to the extent of portion marked with letters 'A', 'B', 'C' & 'D' in the site plan, whereas, the suit filed by Sh. Kanhiya Lal was decreed to the extent of portion marked with letters 'A', 'E', 'F' & 'C' in the site plan annexed with the plaint. As many as four appeals were filed before the First Appellate Court, which were dismissed on reappraisal of evidence.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record and synopsis filed by the learned counsel representing the parties.

6. The learned counsel representing the appellant in both the appeals contend that Sh. Rajbir Singh is in possession of the property pursuant to the agreement to sell and therefore, his possession is liable to be protected under Section 53-A of the Transfer of Property Act, 1882 (hereinafter referred to as the '1882 Act'). It is further submitted that Sh. Sohan Pal never disclosed any detail regarding the alleged settlement deed dated 10.05.1972, and therefore, the same shall not be binding on Sh. Rajbir

Singh. It is also contended that the settlement deed dated 10.05.1972, is not admissible in evidence as it requires compulsory registration because Sh. Kanhiya Lal had no right, title or interest in the property and in the absence of a pre-existing right, the transfer of title can take place only by a registered deed. Lastly, it was contended that the compromise deed dated 10.05.1972, has been fabricated only to frustrate the rights flowing in favour of Sh. Rajbir Singh pursuant to the agreement to sell dated 15.04.1978.

7. On the other hand, the learned counsel representing the respondent has submitted that the collusion between Sh. Rajbir Singh and Sh. Sohan Pal is proved because Sh. Sohan Pal did not contest the suit filed by Sh. Rajbir Singh, whereas, he contested the suit filed by Sh. Kanhiya Lal, his brother. Moreover, in the previous round of litigation, Sh. Sohan Pal did not disclose that he has entered into an agreement to sell with Sh. Rajbir Singh. It is submitted that neither in the suit for partition nor in civil suit No.54 of 1983, Sh. Sohan Pal ever disclosed that he has executed an agreement to sell in favour of Sh. Rajbir Singh.

8. This Court has considered the submissions of the learned counsel representing the parties.

9. It shall be noted here that both the Courts have concurrently found that the alleged agreement to sell is ante-dated. It is also proved that the stamp paper on which the agreement to sell is scribed was purchased for the execution of the affidavit and not for execution of the agreement to sell. Moreover, Sh. Sohan Pal never contested the suit filed by Sh. Rajbir Singh. He though contested the separate suit filed by Sh. Kanhiya Lal but supported Sh. Rajbir Singh. Moreover, in the year 1972, there was a family settlement between two brothers. Thereafter, they have been litigating in the Courts by filing one litigation or the other. Thus, it is apparent that there is

collusion between Sh. Sohan Pal and Sh. Rajbir Singh. Sh. Rajbir Singh can claim protection under Section 53-A of the 1882 Act only against Sh. Sohan Pal. He cannot claim protection against Sh. Kanhiya Lal, who continues to be the owner of the portion marked with letters 'A', 'E', 'F' & 'C'.

10. With reference to the second argument of the learned counsel representing the appellant, it may be noted that once it is proved that Sh. Sohan Pal and Sh. Rajbir Singh are hand in glove with each other, the stand taken by Sh. Rajbir Singh that he was not disclosed about the settlement deed dated 10.05.1972, would not come to the rescue of Sh. Rajbir Singh.

11. The next argument of the learned counsel representing the appellant is with respect to inadmissibility of settlement deed dated 10.05.1972. It may be noted here that the settlement deed dated 10.05.1972 is between the two brothers. Through this settlement, the dispute between the two brothers has been settled. It has also been acted upon and acknowledged to be authentic in all subsequent litigations. A memorandum of family settlement is not required to be registered. Sh. Sohan Pal is also estopped to challenge the correctness of settlement deed dated 10.05.1972. Reliance in this regard can be placed on **Kale and others Vs. Deputy Director Consolidation and others, AIR 1976 (SC) 807.**

12. With reference to the last argument of the learned counsel representing the appellant, it may be noted here that no evidence has been led to prove that the alleged settlement deed dated 10.05.1972, has been subsequently fabricated. In fact, this settlement deed has been proved because Sh. Sohan Pal filed a suit for partition, which was dismissed as Sh. Kanhiya Lal contested the case on the basis of the settlement deed dated 10.05.1972. Moreover, on the basis of the settlement deed dated 10.05.1972, civil suit No.54 of 1983 was also disposed of.

13. Rather, both the Courts have found that the alleged agreement to sell dated 15.04.1978, has been ante-dated in order to avoid the settlement dated 10.05.1972 and the compromise decree dated 26.02.1983.
14. Keeping in view the aforesaid discussion, finding no merit, both the appeals are dismissed.
15. All the pending miscellaneous applications, if any, are also disposed of.

January 08th, 2024
Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No