

(2018) 07 P&H CK 0178

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3931 Of 2015 (O & M)

Ajay Kumar And Others

APPELLANT

Vs

Chiman Lal And Others

RESPONDENT

Date of Decision : 25-07-2018

Acts Referred:

Citation : (2018) 4 CivCC 219 : (2018) 191 PunLR 692

Hon'ble Judges : Anil Kshetarpal, J

Bench : Single Bench

Advocate : Vivek Suri, Aakash Singla, Jatinder Singla

Final Decision : Disposed Off

Judgement

Anil Kshetarpal, J

Plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below while dismissing a suit for possession by way of partition of the property.

Dispute in the present case is with respect to a shop measuring 15 X 111 feet and a house in which the plaintiffs claimed that they have 9/14th share in the shop and 1/7th share in the house.

Rama Mal was common ancestor of the parties. He had two sons namely Sant Ram and Ami Chand. Both the properties undisputedly were joint between Sant Ram and Ami Chand. Ami Chand died in the year 1964. Sant Ram and widow of Ami Chand i.e. Sita Devi entered into a family settlement Ex.P-1 dated 19.04.1966.

In the aforesaid family settlement, certain properties were divided. There is a dispute between the parties that whether shop in question was part of the aforesaid settlement or not. However, that would not make any difference on the decision of the present case on the basis of facts being noticed hereinafter.

Sant Ram has seven legal heirs and the plaintiffs are children of one son i.e. Jiwan Kumar son of Sant Ram. It is the case of the plaintiffs that legal heir of Ami Chand i.e. Sudarshan Pal son of Ami Chand had sold his half share of the shop in question vide registered sale deed dated 08.06.1981 Ex.P-2 on the record. It may be noted that Ajay Kumar son of Sudarshan Pal-(defendant No.7) admits execution of the sale deed. He also admits that there was a partition between the family on 19.04.1966. As noticed, plaintiffs, who are children of Jiwan Kumar son of Sant Ram, claim that they are entitled to 9/14th share in the shop and 1/7th share in the house. Learned trial Court primarily dismissed the suit on the ground that other legal heirs of Ami Chand have not been impleaded as party-defendant.

Learned First Appellate Court affirmed the aforesaid judgment by giving strange reasons. The reasons given by the learned First Appellate Court are extracted as under:-

" It becomes clear that the plaintiffs have not been able to prove their case, as to the fact that they are having any share in the property, because firstly it is not clear even from the pleadings that how the property came in the hands of Sant Ram and Ami Chand and what share they were having in the property. Similarly, by merely alleging that the plaintiffs have 9/14 share in the shop in dispute and 1/7share in the house in dispute, their share does not stand established. The plaintiffs have alleged a partition deed to have been executed between Sant Ram, Sita Devi and Sudarshan Pal, dated 19.04.1966, but there is no witness to prove this document. It is alleged that this partition deed was scribed by one Babu Singh, Deed Writer. This fact is also not proved on record. Once this document is not proved on record, then how the plaintiffs can claim that Sudarshan Pal had ½ share in the suit property, because they have alleged to have purchased the suit property consisting of shop from Sudarshan Pal. PW1 has been examined to prove the sale deed alleged to have been executed by Sudarshan Pal, son of Ami Chand, in favour of Jiwan Kumar, son of Sant Ram. But, before proving the sale deed, it is required to be established on record that Sudarshan Pal was having interest in the property and was competent to execute the sale deed with respect to the said shop. The alleged memorandum of partition has been brought on record as Ex.P1, which is in Urdu Script and translated copy of the same has been brought on record as Ex.P.1/A. Even going through this document, it is not clear how the property has been partitioned. What share has been gone to which party, this document is silent. However, it is only mentioned that the shop in dispute has been kept joint. So, even the plaintiffs have failed to prove that Sudarshan Pal was having ½ share in the shop in dispute and what share he was having in the house in dispute. The case of the plaintiffs is silent."

This Court has heard learned counsel for the parties and with the able assistance of learned counsel for the parties has gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellants has submitted that the suit for possession by way of partition could not be dismissed. It is undisputed that the plaintiffs are children of Jiwan Kumar son of Sant Ram. Hence, he had 1/7th share belonging to Sant Ram. He further submitted that with regard to shop, the plaintiffs were entitled to 9/14th share as they would get 1/7th share of Sant Ram and half share in the shop from Ami Chand. He further submitted that since Ami Chand or his family is neither disputing the family settlement nor disputing the sale deed, therefore, other legal heirs of Ami Chand were not necessary party and the judgment passed by the Courts below are erroneous.

On the other hand, learned counsel for the respondent Chaman Lal son of Sant Ram, who only defended the suit, has pleaded that family settlement dated 19.04.1966 has not been proved on file. He has further reiterated that other family members of Ami Chand were not impleaded as a party and mother i.e. Sito Devi had no right to enter into any family settlement on behalf of her minor children. He has further submitted that since family settlement was not valid, therefore, the sale deed which is based upon family settlement also does not confer any title.

In the considered opinion of this Court, question of law which requires consideration is :-

(i) Whether a family settlement arrived at by a mother on behalf of minor children which is not disputed by the minor children on attaining majority can be disputed by a stranger?

(ii) Whether mother being guardian of minors in a joint Hindu family is entitled to settle the dispute with family members on behalf of minors?

(iii) Whether a deed of a family settlement which is in writing and is admitted by one branch of family is required to be formally proved in evidence?

In the considered opinion of this Court, a mother is entitled to enter into a family settlement being guardian of the minor children subject to minors objecting to the aforesaid settlement on attaining the age of majority. Such documents executed by a guardian can only be objected to within a period of three years from the date the minors overcome the disability and challenge the document. Unless the document is challenged, a stranger has no right to question the validity of the aforesaid document. In a joint Hindu family, it is normal that in the absence of father, mother acts as a guardian and take decisions on behalf of minors unless it is proved that the decision taken by the guardian were not in the interest of minor, even the minor does not have any right to avoid the same.

Still further, defendant No.7 has admitted not only the family settlement but even the sale deed executed by his father-Sudarshan Pal in favour of Jiwan Kumar. Chaman Lal, who is only a legal heir of Sant Ram, has no locus standi to question either the settlement arrived at by Sito Devi on behalf of her children or the sale deed executed by Sudarshan Pal in favour of Jiwan Kumar. It is only

successor-in-interest of Ami Chand, who have right to question aforesaid family settlement or the sale deed.

Learned counsel for the respondent further drew attention to the fact that the plaintiffs cannot claim 1/7th share in the entire house as house jointly belong to Sant Ram and Ami Chand. Hence, the share of the plaintiffs would come to 1/14th in the entire share. On this issue, learned counsel for the appellants does not dispute the submission of learned counsel for the respondent.

In view of the aforesaid discussion, it is held that a stranger is not entitled to challenge a family settlement arrived at by the mother on her behalf as well as on behalf of her minor children, which is not disputed by the minor children on attaining majority.

Question No.2 is also answered in favour of the appellants as mother being guardian of the minor children is entitled to settle the dispute in a joint Hindu family with the family members on behalf of minors subject to their rights. With regard to question No.3, it may be noted that one branch of the family is not disputing the family settlement. The family settlement Ex.P-3 is more than 30 years old document. No evidence has been produced by the contesting defendant to prove that his father had not signed the family settlement. Defendant No.7 grand son of Sita Devi had admitted its execution. Hence, a family settlement in writing admitted by one branch of the family stands proved on file.

Hence, question No.3 is also answered in favour of the appellants.

The appeal is allowed and a preliminary decree for partition is passed declaring that the plaintiffs shall be entitled to 9/14th share in the shop in question and 1/14th share in the entire house in question.

All the miscellaneous applications, if any, are disposed of, in view of the above said judgment.