

(1998) 02 P&H CK 0150

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1732 of 1988

Banwari Lal and Others

APPELLANT

Vs

Attar Chand (Deceased) represented by L.Rs. and Others

RESPONDENT

Date of Decision : 18-02-1998

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 2
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Citation : (1998) 119 PLR 607 : (1998) 3 RCR(Civil) 223

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : D.D. Gupta, for the Appellant; S.D. Bansal, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—This appeal is filed against the judgment and decree of the learned District Judge, Sonapat, in C.R. No. 27/13 of 1986, dated 2.6.1988.

2. The plaintiffs in this appeal filed the suit for possession of the suit land alleging that the defendant Banwari Lal had encroached the suit land which is in Killa No. 1112 to the extent of 3 Kanals 5 Marlas. According to the plaintiff, he purchased the suit land under two registered sale deeds dated 6.11.1959 and 11.2.1969, from Kanij Fatma and Amar Ahmed Khan and the defendants encroached upon the said land, therefore, he filed the suit for recovery of possession. During the pendency of the suit the defendant Banwari All and his legal representatives are brought on record.

3. The defendants denied the title of the plaintiff in the suit land and they further pleaded that suit land was purchased by the defendants from Mohan All on 25.3.1976 and, therefore, they have been in possession of the suit land in their own right.

4. On the basis of the pleadings the trial Judge framed appropriate issues and on consideration of the evidence on record the Sub Judge, 1st Class, Gohana, held

that the plaintiff is entitled to recovery of possession of the land and that defendants were cross-passers and accordingly decreed the suit for possession. Against the said judgment and decree of the trial Court, the defendants preferred an appeal to the learned District Judge, Sonapat, unsuccessfully. The appellants, therefore, filed this second appeal.

5. During the pendency of the appeal an application was filed by the plaintiff respondent in C.M.No. 1820 of 1996 to dispose of the appeal in terms of the compromise dated November 14, 1995. That application was opposed by the appellants. This Court by order-dated 25.9.1996 directed the Additional District Judge, Sonapat to submit a report whether a lawful compromise in terms of Order 23 Rule 3 of the CPC with respect to the trial of the appeal was entered into between the parties or not. In pursuance of the said direction the Additional District Judge, Sonapat submitted his report dated 5.12.1996. According to the learned Additional District Judge, a valid compromise was entered and the appellants agreed to withdraw R.S.A. No. 1732 of 1988 under the terms of the compromise which was filed in Civil Appeal No. 97 of 1994 which was pending on the file of the learned Additional District Judge, Sonapat.

6. The learned counsel for the appellants contended that the compromise is not valid as it does not relate to the subject matter of suit and also it is not in accordance with the provisions contained under Order 23 Rule 3.

7. It is admitted fact in regard to some of the property another appeal namely Civil Appeal No. 91 of 1994 was pending before the Additional District Judge, Sonapat between the same parties. In that appeal a compromise was filed and that appeal was disposed of in terms of the said compromise. Clause 6 of the said compromise reads as follows :

"That parties will also withdraw their cases pending in the various courts with regard to the property in question. Similarly, RSA No. 1732 of 1988 pending in the Punjab and Haryana High Court will be withdrawn by the concerned appellants i.e. Tara Chand etc. which relates to the portion of open land lying in northern side of land in dispute and part of killa No. 1112."

8. According to the respondents, in view of this clause in the compromise which was filed by the parties in Civil Appeal No. 97 of 1994 this appeal is liable to be dismissed as withdrawn.

9. The first contention of the learned counsel for the appellants is that the said compromise was entered into the Civil Appeal No. 97 of 1994 and it was in that suit only. That suit does not relate to the property which is involved in this second appeal, therefore, the compromise filed in that suit cannot be enforced and appellants were not bound to withdraw this appeal. I am unable to accede to this contention of the learned counsel for the appellants. The compromise is not only in respect of the subject matter of the suit in C.A.No. 97 of 1994 but also in respect of all the disputes between the parties and under Clause (6) the parties agreed to withdraw their cases pending in the various courts with regard to the

property in question.

10. A reading of the compromise clearly shows that the parties intended to resolve all their disputes to maintain peace and harmony. The parties have given up their claim in regard to certain property in favour of the other. It is a bilateral one. It cannot be said on a reading of the compromise that it relates only to the property which is a subject matter of the appeal in Civil Appeal No. 97 of 1994 pending in the Court of the Additional District Judge, Sonapat. Order 23 Rule 3 prior to the amendment in 1976 reads as "so far as it relates to the suit" but the same was substituted" so far as it relates to the parties to the suit whether or not the subject matter of the agreement, compromise or satisfaction is the same as subject matter of the suit." Therefore, in my opinion, the compromise need not be confined only to the subject matter of the Civil Appeal, No. 97 of 1994 pending on the file of Additional District Judge, Sonapat. If the compromise is between the parties to the suit the same can be acted upon by the Court.

11. Learned counsel for the appellants further contended that the compromise has not been signed by all the appellants though it was signed by one of the appellants and the Advocate appearing for the appellants in that appeal and since the same was not signed by all the appellants in that appeal, it cannot be said that there is a valid compromise. He relied upon a decision of the Supreme Court in Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, .

12. Admittedly Tara Chand who is the son of the original defendant signed the compromise and it was also signed by the Advocate for all the legal representatives of the original defendants, It is also on record that all the legal representatives executed a power of attorney in favour of Tara Chand who signed the compromise and in pursuance of the said power of attorney Tara Chand sold the property which the appellants got under the compromise to others. Having taken advantage under the terms of the compromise and having acted upon it and having sold the property which the appellants obtained under the said compromise it is not open to turn around at this stage and say that they did not agreed to withdraw this appeal and that the compromise which included withdrawal of this appeal is not valid on the ground that they did not sign the compromise. The counsel representing all the appellants signed the compromise and the person in whose favour a power of attorney was executed by all the appellants also signed the compromise. Therefore it is binding on them. The decision relied upon by the learned counsel for the appellants in Banwari Lal's (supra) that the compromise signed by the Advocate is not binding upon the parties has no application as in that case it was found that fraud has been played by the parties and the Advocate who signed the compromise misrepresented the facts and acted adversely to the interests of his client. Such is not the case here. There is no averment that the Advocate for the appellants committed any fraud, misrepresented or acted adversely to his client. I am, therefore, of the opinion that the decision relied upon by the learned counsel for the appellants has no application.

13. I am, therefore of the opinion that the appellants agreed to withdraw this appeal and the compromise filed in Civil Appeal No. 97 of 1994 before the Additional District Judge, Sonapat has been acted upon. The clause relating to withdrawal of this appeal is also binding on the appellants as the compromise has been given effect to in regard to the property in which the respondents have relinquished their rights in consideration after appellants agreeing to withdraw this appeal. In this view of the matter, I am of the opinion that the appeal is liable to be dismissed on that ground.

14. As both the learned counsel argued on facts also and to decide the matter finally I propose to deal with the appeal on merits also, though I found that the appeal is liable to be dismissed as withdrawn in terms of the compromise as stated above.

15. According to the plaintiff-respondents they purchased the suit property from Kanij Fatma and others and the registered sale deed dated 19.5.1959 was executed. The said sale deed was marked as Ex.P-2. On the basis of the purchase the plaintiffs claim the suit property. Ex.P.3 dated 3.3.1960 shows that mutation was sanctioned in favour of the plaintiffs. Ex.P.5 is a copy of Khasra Girdawari for the year 1958 to 1962 which shows that the land was transferred by Kanij Fatma and others in favour of Atter Chand, the plaintiff herein, Ex.P.11 is the certified copy of the Khasra Gir dawari showing that the purchaser has been in possession in the suit property from 1968 to 1973. Ex.P.12 is the Khasra Girdawari, for the year 1973 to 1977. Ex.P.13 is the revenue record for the year 1970 to 1979 showing Atter Chand in possession of the suit land. Thus the overwhelming evidence shows that they have been in possession of the suit land right from 1959 till the year 1979. According to the defendants the suit property is an evacuee property. Since Kanij Fatma migrated to Pakistan, therefore, it vested in the Central Government under the provisions of Administration of Evacuee Property Act and the authorities acting under the said Act auctioned the property and in that auction the property was purchased by Ram Lubhaya and Mohan All who derived their title from the custodian of the evacuee property. The appellants are relying on Ex.D.6 and D.7 which are the certificates of sale issued by the authorities under the Administration of Evacuee Property Act in favour of Ram Lubhaya and Mohan All who are said to be the predecessors of the appellants but the fact remains that the property has never been evacuee property as the original, owners of the land Kanij Fatma and Amar Ahmed Khan never left this country and never migrated to Pakistan, In the year 1959 both Kanij Fatma and Amar Ahmed Khan appeared before the Sub Registrar and executed the sale deed in favour of the plaintiff and the possession of the property was also recorded as that of Kanij Fatma and Amar Ahmed Khan in the revenue record. Therefore, the property cannot be evacuee property. u/s 2(d) of the Administration of Evacuee Property Act an evacuee is a person who on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances leaves or has or after the first day of March, 1947, left any place in a State for any place outside the territories

now forming part of India. Clause (f) of Section 2 defines evacuee property as any property of any evacuee. When the original owners have not left India then their property cannot be termed as evacuee property and therefore under the provisions of the Act do not vest in the Central Government and, therefore, the Central Government has no authority to alienate or transfer the said property. It is never pleaded that Kanij Fatma and Amar Ahmed Khan left India at any point of time before selling the property to the plaintiffs. The sale deed in favour of the plaintiff was never questioned by any body. Therefore, even there are sale certificates in favour of the predecessor of the appellants they are not valid as the Central Government has no power to transfer the property treating it as evacuee property. Further, the defendants have failed to examine any person from the Rehabilitation department. There is no evidence to show that the property is evacuee property. In the absence of such evidence, it cannot be said that the appellants or their predecessor derived title from Ex.D.6 and D.7.

16. Learned counsel for the appellants argued that the Courts below rejected Ex.D.6 and D.7 on the ground that they are not registered. I agree with the contention of the learned counsel for the appellants that they need not be registered as the sale certificates issued by the revenue authorities are excepted from registration but, this does not take the case of the appellants any further.

17. In view of the foregoing discussion, I am of the opinion that there are no merits in this appeal and the appeal is accordingly liable to be dismissed. The result is that the appeal fails and is accordingly dismissed but without costs.