
(2020) 12 P&H CK 0451

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1619 Of 2020 (O&M)

Meera Jindal

APPELLANT

Vs

Naveen Jindal And Others

RESPONDENT

Date of Decision : 23-12-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 27

Citation : (2020) 12 P&H CK 0451

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : Amit Jain, Suman Jain

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J

The present appeal is directed against the judgments of the Courts below at Hisar District dated 11.04.2016 and 28.02.2020 whereby the suit for

declaration dated 31.08.2010, with consequential relief of injunction, filed by the plaintiff-appellant, had been dismissed by both the Courts.

Counsel for the appellant has vehemently contended that the Lower Appellate Court has wrongly come to the conclusion that respondents No.8 to 12

were bona fide purchasers as possession had not been handed over initially to respondent No.6, Rajat Ghai, who had purchased share in the property

to the extent of 1/4th, vide first sale deed dated 17.12.2009 (Ex.R-3). Secondly, it is argued that family arrangements are liable to be upheld and

therefore, the findings by the Courts below that a family arrangement between the parties was bogus, was not justified.

Counsel for the respondents No.8 to 12, the purchasers has submitted that the plea was that the property was purchased from a joint family account

but neither any such accounts were produced nor any bank statements were produced to prove the said facts. Similarly, apart from the plaintiff, no

other family member had appeared in support of the case of the appellant and thus, submitted that once the plaintiff could not stand on her own legs,

the Courts below were justified in coming to the conclusion that it was a bogus family settlement and was rightly ignored.

The dispute pertains to the plot the details of which have been given in the judgments of the Courts below which was sold by one Janardhan Dass on

04.01.2007 (Ex.PW-1/A) to respondent No.1, who is none else but the son of the appellant. The claim of the appellant was that she was the sole and

exclusive owner of the plot on the basis of the oral family settlement dated 01.04.2009 and which was reduced in writing on 01.01.2010 (Ex.PW-3/B).

The plot was alleged to have been purchased by the plaintiff from the joint Hindu family funds of the appellant, respondent No.1 and the second son,

Praveen Jindal. The family settlement was also alleged to have been signed by the 3 family members. The alienation of the plot initially to respondent

No.6, Rajat Ghai vide sale deed dated 17.12.2009 (Ex.R-3) in respect of the 1/4th share was, thus, challenged and the further sale deed to respondent

No.7, Anil Bansal on 30.12.2009 (Ex.R-7). It is not disputed that during the pendency of the suit, defendant No.7 had further alienated his share on

06.09.2010 (Ex.R-8) to respondent No.11, Sanjay who had further alienated it to respondent No.2. It was further alleged that respondent No.1 had

executed a GPA dated 27.07.2010 (Ex.R-2) in favour of respondent No.2, Anand who had executed registered sale deed on 29.07.2010 (Ex.R-4) i.e.,

2 days subsequent to Swaroop Chand, respondent No.3. The said respondent had further alienated the land on 04.08.2010 (Ex.R-5) to respondents

No.4 & 5, Kewal Krishan and Kuldeep. Resultantly, the same were challenged. The property was further alienated to respondents No.8 to 12 on

30.08.2010 (Ex.R-6). The case of the plaintiff-appellant was that she had also filed a Civil Suit for injunction in which stay of alienation had been

granted in her favour, after the sale deed had taken place.

The contesting respondents No.8 to 12 averred that there was no family settlement and respondent No.1 had purchased the plot out of his own

income, in his own name and the plaintiff had no concern whatsoever with the plot in question. It was a concocted story, in connivance with the

mother and son to grab the plot which had been sold and they had a habit of creating forged documents and alleged family settlement and filing false

cases against each other in order to grab the property of bona fide purchasers. Respondent No.1 was the registered owner of the plot measuring 189

sq.yards out of which, he had sold 47.25 Sq.yards to respondent No.6 for a consideration of Rs.1,42,000/-. It is submitted that they were owners in

possession vide the respective sale deeds. Resultantly, the following issues were framed by the Trial Court:

Issue no.1: Whether the plaintiff is entitled for declaration on the grounds, as prayed for? OPP Issue no.2: Whether the plaintiff is entitled for

permanent injunction (prohibitory) on the grounds, as prayed for? OPP Issue no.3: Whether the suit is not maintainable in the present form? OPD

Issue no.4: Whether the plaintiff has no cause of action and locus standi to file the present? OPD Issue no.5: Whether the plaintiff is estopped by his

own act and conduct to file the present suit? OPD Issue no.6: Whether the suit of the plaintiff is bad on account of mis-joinder and non-joinder of

necessary parties? OPD Issue no.7: Whether the civil court has no jurisdiction to try this suit? OPD Issue no.8: Whether the suit is hopeless and time

barred? OPD Issue no.9: Whether the suit is liable to be dismissed for want of court fees? OPD Issue no.10: Relief.??

The appellant appeared as PW-3 and gave her version of her case whereas Jai Prakash, PW-4, one of the attesting witnesses of the family

agreement dated 01.01.2010 put in appearance. Respondents examined as many as 11 witnesses and produced the relevant sale deeds on record

along with another family settlement dated 9.05.2011 (Ex.R-1) pertaining to the appellant's family.

On the basis of the evidence produced, the Trial Court came to the opinion that there were 3 family members of the joint Hindu family but both the

sons had not appeared to prove the stand of the plaintiff regarding the fact that the plot was purchased out of the joint Hindu family. The sale deeds

were examined to come to the conclusion that it was in favour of respondent No.1 for a consideration of Rs.2,83,500/- and thus, he was the exclusive

owner in possession of the suit and had the right to use the suit property as per his wishes. The family settlements were neither registered nor had any

stamp of the Notary and the witness had stated that no other partition had taken place in her presence. The evidence was also noticed that family

settlement was already typed before presented before the witness and that he had no knowledge of the properties owned and possessed by the

plaintiff and her 2 sons. He, however, admitted his signatures on the other family settlement dated 09.05.2009 (Ex.R-1) in cross examination.

Thus, the Court came to the notice that he had denied, in his cross-examination, the factum of the other family settlement but admitted his signatures

on the same and therefore, his credibility was doubted. Resultantly, since only the plaintiff had appeared to put-forth her case, the Trial Court came to

the conclusion that family settlements normally are for bringing peace and harmony but not for initiating litigation. It was also noticed that before the

family settlement was put in writing on 01.01.2010, 1/4th share had already been sold on 17.12.2009. Both the sons had not appeared as witness and

therefore, it was not sufficient for proving the family arrangement and it was not reliable. The sale deeds were produced as noticed that they were

executed and registered against consideration and there was no proof that they were done under pressure and result of any fraud and therefore, it was

held that respondents No.8 to 12 were bona fide purchasers and the sale deed as well as the General Power of Attorney No.179 was not liable to be

set aside. Resultantly, issues regarding declaration and injunction were decided against the appellant. The suit being not maintainable and plaintiff

having no cause of action, was decided in favour of the defendants and against the plaintiff. Issues No.5 to 9 being not pressed, the said issues of time

barred and no estoppel, were decided against the respondent-defendants.

In appeal, an application for additional evidence was filed to produce the file of the Civil Suit No.132-C of 2010 and the orders dated 26.03.2010 and

27.03.2010 along with the judgment and decree dated 16.12.2010, in order to prove that respondent No.1 was not competent to alienate the property

as there was a stay in favour of the appellant. The plea taken for not able to produce the said documents was rightly rejected by the Lower Appellate

Court by relying upon Rajiv Sahai & another Vs. Wg. Cdr. Ashok Kumar Sahai (Retd.) 2018 (2) Civil Court Cases 549G, ovt. of Karnataka &

another Vs. K.C.Subramanya & others 2014 (2) Civil Court Cases 232 (SC)& Union of India Vs. Ibrabim Uddin & another 2012 (4) RCR (Civil)

127. The provisions of Order 41 Rule 27 CPC were also relied upon to hold out that the application was not liable to be allowed as it did not fall within

the ambit of the said provisions by noticing that it was well within the knowledge and there was pleading regarding the said Civil Suit and therefore, the

evidence was not relevant and not necessary for the decision of the appeal.

The Apex Court in *Satish Kumar Gupta & others Vs. State of Haryana & others* 2017 AIR (SC) 1072 has also held in such terms that an application

for additional evidence cannot be used to fill up the lacuna in the case and therefore, no fault can be found with the order of the Lower Appellate

Court rejecting the application for additional evidence. The claim itself was based on the ground that there was an earlier suit filed and inspite of the

stay granted, alienation had been effected. However, relevant documents had not been produced before the Trial Court inspite of pleading so and

therefore, the Lower Appellate Court had rightly rejected the said application.

The reasoning to dismiss the appeal on merits was also that the sale deed was a registered document and apart from the statement of the plaintiff,

there was no other witness to prove that the family settlement had been entered into and it was held to be a bogus settlement. Resultantly, it was held

that respondents No.8 to 12 were bona fide purchasers.

The argument of Mr.Amit Jain, by placing reliance upon the judgment in *Jagdish Vs. Ram Karan* 2003 (1) PLR 182 while falling back on the

observations of the Apex Court in *Kale Vs. Deputy Director of Consolidation* AIR 1976 (SC) 807, would not take him a long way. The dispute therein

was that the estate of one Budh Ram, whose brother, Basti Ram, being unmarried, had suffered a decree in favour of his real brother, Ram Karan. It

was found that the decree was suffered voluntarily by the said brother since he was living jointly with him and was a disabled person. Keeping in view

the said background, this Court had upheld the orders whereby the suit of the plaintiff was dismissed and had been upheld by the other Courts.

Resultantly, observations were made regarding the concept of family settlement that the decree in question was being based on a family settlement

were not to be compulsorily registered. There is no quarrel with the said proposition.

In the present case, as noticed, the plaintiff has failed to produce any document in support of the fact that she had contributed to the sale deed dated

04.01.2007 either by producing the bank accounts or any other oral evidence in the form of any other person who was witness to the said sale deed.

Rather, both her sons had also not stepped in the witness-box to support her case that she had contributed towards the purchase of the plot vide sale

deed dated 04.01.2007 which was in favour of one of her sons. It has already been noticed that the son had already sold 1/4th share to respondent

No.6 on 17.12.2009, even before the oral family settlement dated 01.04.2009 could be reduced in writing on 01.01.2010. Resultantly, he had no such

authority on 01.01.2010 to dole out the property to his mother. The terms of the said agreement would also go on to show that it does not show that

the sons were compensated in what manner as there was only reference to cash in lieu of their share. The said family settlement had been witnessed

by Naveen Jindal, who is incidently a witness to another family settlement which was executed on 09.05.2011, which was brought on record as Ex.R-

1 by the respondents and was also placed on record by the appellant as Annexure A-3 in the present appeal.

However, a perusal of the said settlement which was executed approximately seven months later, would also go on to show that another set of

property was but in the ownership of the appellant and the sons were devoided of their rights. Interestingly, the said agreement does not make

reference to the earlier agreement. In normal circumstances family settlements usually take place in a composite manner where all properties are put

in pool and then divided amongst all family members. The correctness of the family agreement on the basis of which the appellant has filed the suit

has, thus, been rightly doubted as the witness has admitted his signatures on the second family arrangement but in cross-examination, has stated that

there was no settlement as such which had taken place in his presence. Resultantly, the testimony has rightly been discredited in the cross-

examination and therefore, the Trial Court has not accepted his deposition.

The sons having not stepped forward in the witness-box, an adverse inference was rightly drawn against the appellant as they avoided the cross-

examination. In such circumstances, the Courts below have rightly come to the conclusion that respondent No.1 was the sole owner of the plot in

question and had a legal right to alienate the same and the appellant had not been able to prove her ownership over the plot in question.

The findings of the Courts below do not raise any substantial question of law and do not suffer from any infirmity or illegality which would warrant

interference by this Court in second appeal. Resultantly, in view of the above discussion, the present appeal is dismissed in limine, being devoid of any merit.