
(2016) 08 P&H CK 0357

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2707 of 2014 (O&M)

Radhey Sham Bhatia

APPELLANT

Vs

Rajni Soni widow of Surinder Soni

RESPONDENT

Date of Decision : 10-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 37, 38

Citation : (2016) 167 AIC 782 : (2017) 1 CivCC 502 : (2016) 4 PLR 108 :
(2017) 1 RCRCivil 222

Hon'ble Judges : Mr. Amit Rawal, J.

Bench : Single Bench

Advocate : Mr. Ravi Malik, Advocate for Mr. P.S. Chauhan, Advocate, for the Appellants

Final Decision : Dismissed

Judgement

Mr. Amit Rawal, J.—The present appeal had been filed on 26.03.2014 and was first time listed on 02.09.2014. From 02.09.2014 onwards, 8 adjournments had been sought on one pretext or the other i.e. on 01.12.2014, 15.01.2015, 04.05.2015, 20.07.2015, 24.08.2015, 18.01.2016, 10.02.2016 and 07.04.2016. On 07.04.2016, the matter was adjourned for today i.e. 04.08.2016. Today also a request for adjournment is made. I declined the request and reserved the case for orders.

2. The appellants-plaintiffs are aggrieved of the judgment and decree passed by the lower Appellate Court whereby the suit had been partly decreed viz-a-viz permanent injunction from interfering with the peaceful possession of the plaintiffs granted but relief qua restraint from alienating the specific portion and more than share of the house in question by defendants No.1 and 2 by way of sale/lease/mortgage/transfer or in any other manner was declined.

3. The case of the plaintiffs in the plaint was that Sita Ram was the owner of the property. He was married to Raj Kumar Soni. They had three daughters namely

Kamlesh Bhatia @ Saroj Soni, Sudesh Bhatia, Swaraj and one son namely Surinder Soni. Kamal Bhatia @ Saroj Soni died and her husband and children are the plaintiffs, being the legal heirs. Swaraj also died but his legal representatives are not made parties whereas defendant Nos.1 and 2 are the legal representatives of Surinder Soni, who has also died. Sudesh Bhatia joined in array of parties as proforma defendant No.3.

4. It is a matter of record that after demise of Sita Ram, property was mutated in favour of his widow Raj Kumar Soni. The plaintiffs further asserted that they are residing in the house in question in the portion shown in red colour in the site plan Ex.P1 and even paying the tax and receipts of the same have been produced as Ex.P2 and P3. Water connection application Ex.P4, ration card Ex.P5, voter card Ex.P7 and original ration card Ex.P8 have also been brought on record. It has been submitted that since they are shareholders, they cannot be dispossessed except in due course of law and the respondents-defendants cannot alienate or create any third party right except by way of partition.

5. The respondents-defendants contested the suit on the ground that plaintiff along with her sisters relinquished their share in the said house in favour of Surinder Rani by filing an affidavit dated 24.08.2001 in Municipal Committee, Karnal. Plaintiff and her sisters undertook not to claim any right in the house in question.

6. The trial Court dismissed the suit, however, the lower Appellate Court partly decreed the suit by granting injunction in favour of the appellants-plaintiffs qua forcible interference with peaceful possession from the hands of defendants or their agents and servants but declined the relief of restraining defendant Nos.1 and 2 from alienating specific portion and more than their share of the house in question by way of sale/lease/mortgage/transfer or in any other manner.

7. The ground taken in the memorandum of appeal is that affidavit dated 24.08.2001 could not be looked into for want of registration and if the document values more than Rs. 100/- pertaining to immovable property, it requires registration, but there are certain exceptions to this law, wherein relinquishment of share by a family member in favour of another member in a family by way of an affidavit is permissible and same does not require registration.

8. I have gone through the paper book and of the view that the affidavit is dated 24.08.2001 whereas the amendment in the Registration Act was caused on 24.09.2001 by incorporating sub-section 1-A in Section 17 of the Registration Act, which is reproduced as under:-

"(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said

section 53A."

9. Therefore, in my view the aforementioned documents did not require registration. In cross-examination, the plaintiff-Kamal Bhatia @ Saroj Soni had admitted her signatures in the affidavit dated 24.08.2001 over Mark DX. The plaintiffs, successors-in-interest, also admitted her signature on the same. She had given affidavit for transfer of the property in the name of defendants but the fact remains that the possession of the plaintiffs over the red portion as shown in the site plan Ex.P1 stood established. In my view, the lower Appellate Court has correctly declined injunction in favour of the appellants-plaintiffs viz-a-viz the other relief in view of the law laid down by the judgment of Full Bench judgment of this Court in *Bhartu v. Ram Sarup*, 1981 PLJ 204 and Division Bench judgment in *Bachan Singh v. Swaran Singh* 2000 3 RCR(Civil) 70. I am of the view that once the affidavit dated 24.08.2001 of plaintiff-Kamal Bhatia @ Saroj Soni is prior in time of coming into effect the amendment in the Registration Act i.e. on 24.09.2001, the aforementioned document did not require registration. The suit was also instituted as late as in January, 2005. It is known practise amongst the co-sharers of having arrived at some consensus in view of an agreement/settlement and therefore, volt face. It is the classic case of such nature.

10. I do not find any illegality and perversity in the findings rendered by the lower Appellate Court as the same have been founded on correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeal is dismissed.