Amarjit Singh Vs Surjan Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 25, 2012

Citation: (2012) 166 PLR 232

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.
Defendant-Amarjit Singh having lost in both the courts below has filed the instant second appeal. It is unfortunate litigation

between father and son. Respondent-plaintiff Surjan Singh, who is father of defendant-appellant Amarjit Singh, filed suit alleging that he is owner of

the suit property comprising of a shop and a room, which is part of property No. 14. He purchased land vide sale deed dated 07.07.1975 and

raised construction of four shops and rooms etc. out of which, the plaintiff give the disputed shop and room to the defendant on license. License

fee was Rs. 500Y- (Rupees five hundred) per month. License of the defendant was terminated vide notice dated 19.10.2004. But the defendant

failed to give vacant possession of the suit property to the plaintiff. Accordingly, the plaintiff sought mandatory injunction directing the defendant to

deliver possession of the disputed shop and room to the plaintiff.

2. Defendant alleged that by virtue of oral family settlement effected in the year 1997, suit property and some other portion of the building fell to his

share and since then he is owner in possession thereof. Defendant''s brothers are also owners in possession of the respective portions of the

building, which fell to their share. Plaintiffs averment regarding license was denied. Various other pleas were also raised.

3. Learned Civil Judge (Junior Division), Amritsar vide judgment and decree dated 08.06.2009 decreed the plaintiff''s suit. First appeal preferred

by defendant has been dismissed by learned District Judge, Amritsar vide judgment and decree dated 02.03.2010. Feeling dissatisfied, defendant

has filed the instant second appeal.

4. I have heard learned counsel for the parties and perused the case file.

5. It is undisputed and also stands proved that the plaintiff himself purchased the plot on which building, of which suit property is part, stands. The

defendant has not taken the plea that the property was purchased or constructed with joint Hindu Family funds. The defendant did not allege that

the suit property and the other property was ancestral coparcenary property in the hands of the plaintiff. Consequently the plaintiff being owner of

the suit property, his suit had been rightly decreed by the courts below.

6. Defendant alleged that in some oral family settlement in the year 1997, the suit property and other part of the building fell to his share and since

then he is owner in possession thereof. However, there is no cogent evidence to support this stand of the defendant. Practically there is only self-

serving oral statement of the defendant regarding the alleged oral family settlement under which he claims to have become owner of the suit

property and other portion. In addition to it, he has produced evidence to depict that he had his ration card and listed as voter in the aforesaid

property. He has also proved site plan of the suit property. However, listing of defendant as voter or his ration card in the suit property does not

prove the alleged oral family settlement because even according to plaintiffs version, the defendant is in possession of the suit property. Oral self-

serving statement of the defendant, in the absence of any other evidence whatsoever, is not sufficient to prove the alleged oral family settlement and

to divest the plaintiff of his ownership over the suit property and to vest its ownership in the defendant. It is particularly so because the suit property

is self-acquired property of the plaintiff and there is not even an averment by the defendant-appellant that it was coparcenary ancestral property in

the hands of plaintiff.

7. Learned counsel for the appellant relying on two judgments of Hon''ble Supreme Court in the cases of Bhagwan Krishan Gupta v. Prabha

Gupta and others,1 (2009)11 S.C.C. 41 and Ranganayakamma and Another Vs. K.S. Prakash (D) by L.Rs. and Others, 3 and two judgments of

this court in the cases of Chanan Singh and Others Vs. Surjit Singh and Others, and M/s Narinder Kumar Shiv Kumar Dhawan v. Sunita

Chopra,4 2007(2) CCC 164 (P&H) contended that there can be oral family settlement also among family members and even if the property is

self-acquired, if both parties declared each other to be owners of the property in equal share therein, such arrangement by way of family settlement

is permissible. Reference was made to statements of plaintiff and his witnesses to contend that they have admitted that there was division of

property by the plaintiff among all his sons and thus support for defendant''s version about family settlement was sought to be drawn from the said

statements.

8. I have carefully considered these contentions but the same although apparently attractive, cannot be accepted.

9. There can be oral family settlement among family members. Concept of oral family settlement is well recognized. However, such oral family

settlement has to be proved as a matter of fact. In the instant case, defendant has miserably failed to prove the alleged oral family settlement under

which he claims to be owner of the suit property and other property. In the case of Bhagwan Krishan Gupta (supra), both the brothers admitted

each other to be owners of the property in equal share. In the instant case, however, the plaintiff never admitted the defendant or his brothers to be

owners of different portions of the property in question. Statements of plaintiff and his witnesses regarding division of the property among sons of

the plaintiff does not depict in any manner that different portions were given to plaintiffs sons as owners. On the other hand, these statements simply

depict that the alleged division was for the purpose of separate residence of the sons of the plaintiff. The plaintiff specifically denied the suggestion

put to him in cross-examination that defendant is residing in the suit portion as owner thereof. The plaintiff also stated that the suit property was

given to plaintiff on license, thus ruling out ownership thereof in favour of defendant. Thus so-called division of property by plaintiff among his sons

into different portions of the property was for the purpose of their separate residence and not for the purpose of conferring ownership of the said

portions on the plaintiff"s sons or for divesting the plaintiff of his ownership over the property. The contention that plaintiff divided the property

among his sons including the defendant would rather depict that plaintiff is owner of the property. There is concurrent finding by the courts below

that the alleged family settlement conferring ownership on the defendant over the suit property is not proved. The said finding does not suffer from

any infirmity nor it is based on misreading or misap-preciation of evidence. The said finding does not warrant interference because the said finding

is the only reasonable finding that can be arrived at on appreciation of evidence. No question of law, much less substantial question of law, arises

for adjudication in this second appeal. The appeal is bereft of merit and is accordingly dismissed.