

(2012) 01 P&H CK 0072

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 1416 of 2011

Amarjit Singh

APPELLANT

Vs

Surjan Singh

RESPONDENT

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 plaintiff's 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 misappreciation 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.