

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.2567 of 1989

Date of Decision: 29.04.2015

Baldev Singh and others

..... APPELLANTS

VERSUS

Kanwal Jit Kaur and another

..... RESPONDENTS

PRESENT: - Mr. Gursher Singh, Advocate
for the appellants.

Mr. A.P. Kaushal, Advocate
for respondent No.1.

None for respondent No.2.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

- 1) Whether Reporters of the local papers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

SHEKHER DHAWAN, J.

The present Regular Second Appeal filed against judgment and decree 18.05.1989 whereby judgment and decree dated 19.09.1985 passed by Sub Judge, IInd Class, Jalandhar was dismissed.

For convenience sake, hereinafter, reference to

the parties is being made as per their status in the Civil Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiffs Smt. Balbir Kaur and others filed suit for declaration on the ground that Rachhpal Kaur was the owner of the land in dispute along with another piece of land 133 kanal 2 marla. The said land was donated by Smt. Rachhpal Kaur to Balbir Kaur on 05.10.1958. Rachhpal Kaur donated 162 kanal 2 marla in favour of plaintiffs No.2 to 4 and Parambir Singh (since deceased) in equal shares as per registered gift deed dated 05.10.1958 and, as such, all the four brothers became the owner of the land measuring 40 kanal 10 marla each. The other portion of land 130 kanal was agreed to be sold by Rachhpal Kaur to plaintiffs No.2 to 4 and their brother Parambir Singh for a total sum of ₹19,500/-. At the time of registration of sale deed, objection was raised and name of Parambir Singh was dropped from the name of vendees and the area was changed from 130 kanal to 98 kanal. The rectified sale deed was registered on 11.08.1972. After the death of Smt. Rachhpal Kaur, Smt. Balbir Kaur became the sole heir and owner of 32/130th share in the land. Parambir

Singh husband of defendant died in an accident on 10.12.1982, leaving behind plaintiff No.1 and defendant as his natural heirs. Parambir Singh executed will dated 12.01.1982. Mutation No.1258 relating to inheritance of Parambir Singh was sanctioned on 17.02.1983 without reference to will dated 12.01.1982. The plaintiff also came to know about the said mistake occurred in the mutation No.1114. Since Parambir Singh was Canadian, he was required to obtain permission from Reserve Bank of India before inheriting the property. More so, as per Will dated 12.01.1984, the property of Parambir Singh was to devolve upon plaintiff No.1.

Defendant contested the suit taking the legal objection that the present suit was barred as per provisions of Order 23 Rules 1 & 4 read with Section 151 CPC. Parambir Singh never intended to go to Canada and he had not executed any will in favour of plaintiff No.1. The alleged Will dated 12.01.1982 was false and fabricated document. Mutation regarding the inheritance of Parambir Singh was sanctioned in presence of plaintiff No.1 and defendant. On 04.03.1983 and plaintiff No.1 had also filed appeal before the Collector, Jalandhar and the same was dismissed on 31.05.1983.

On these facts, the following issues were framed

and settled:

1. Whether the plaintiffs have no locus standi to file the present suit? OPD
2. Whether the suit is barred by principle of resjudicata? OPD
3. Whether the suit is bad for mis-joinder of necessary parties? OPD
4. Whether the defendant is not a citizen of India?
If so, its effect? OPP
5. If the above issue is proved, whether the defendant could own and inherit the area without the permission of the Reserve Bank of India? OPD
6. Whether the plaintiffs are owners in possession of the suit land? OPP
7. Whether the civil court has no jurisdiction to try and entertain the present suit? OPD
8. Whether the present suit is not maintainable? In view of the provisions of Section 158 of the Punjab Land Revenue Act? OPD
9. Whether the suit is liable to be dismissed in view of the provisions of Order 23 Rule 1(4)? OPD
10. Relief."

The Court of First Instance while considering the material and evidence available on file partly decreed the suit for declaration to the effect that Balbir Kaur (plaintiff No.1) was owner to the extent of one half share of estate of Parambir Singh and remaining ½ share vested in the defendant and the remaining plaintiffs are having their

respective shares in the land in dispute.

The plaintiffs challenged the said judgment and decree before the Court of First Appeal but remained un-successful and, as such, the present second appeal before this Court.

At the time of arguments, Mr. Gursheer Singh, learned counsel for the appellants took the plea that on the basis of gift deed dated 05.10.1958, 133 kanal 2 marla land was donated. After re-marriage, Kanwaljit Kaur forfeited her rights on 07.04.1984. However, the same plea was not taken before the Courts below and there is no such pleading. The Courts below had not framed any issue on this point and the same resulted into injustice to the plaintiffs-appellants. More so, the Revenue Authorities committed error while sanctioning mutation No.1114 in favour of all the four brothers and failed to read the note given in the sale deed and there is no logic to draw adverse inference from said mutation. The sale was of 98 kanals only and 32 kanals of land remained in the hands of Rachhpal Kaur. Parambir Singh could not be held to be the owner of aforesaid 32 kanals of land. The Courts below failed to appreciate the evidence available on file, which resulted into erroneous finding and said findings be reversed and appeal be accepted.

While arguing on these points, Mr. A.P. Kaushik, learned counsel for respondent No.1 took the plea that the present appeal filed against the concurrent findings of both the Courts below. More so, earlier suit was dismissed as withdrawn on 08.09.1983. No permission was sought for filing fresh suit. Even appeal was dismissed.

Learned counsel for the respondent also took the plea that it does not make out any difference that Parambir Singh was Canadian and the same is not a bar to inherit the property in India. More so, the permission had already been obtained from the authorities in this regard. The appeal against judgment of both the Courts below is without any merit and the same be dismissed.

Having considered the rival contentions, this Court is of the considered view that as per Ex.D-4, the copy of the order vide which the suit was dismissed as withdrawn on the basis of statement made by the counsel for the plaintiffs. The matter in dispute was relating to inheritance of Parambir Singh regarding same property and the present suit was for same cause of action. Undisputedly, the suit was withdrawn without seeking permission of the Court to file a fresh suit and the Courts below rightly recorded the findings that there is complete bar as per Order 23 Rule 1 (4) CPC for filing fresh suit relating to same property. The

facts are not disputed any way that the present suit was filed before the Court of first instance on 08.09.1983 whereas earlier the suit was withdrawn on 10.09.1983. Meaning thereby, the suit was filed during the pendency of earlier suit.

As regard to status of Parambir Singh, the Courts below rightly discussed the provisions of Section 31 of Foreign Exchange Regulation Act and held that there cannot be any bar to the right of inheritance as inheritance never remained in abeyance.

In view of the above, the findings recorded by both the Courts below are based on facts of the case and evidence available on file. There are no substantial questions of law involved in this case calling for interference by way of the present Regular Second Appeal and, as such, the present appeal is without any merit. The same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

April 29, 2015
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