

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

(1)

**Regular Second Appeal No.1358 of 1994 (O&M)
Date of Decision: September 21, 2015.**

Saraswati Devi & Ors.

.....APPELLANT(s).

VERSUS

Thakar Mal Gutti Ram & Ors.

.....RESPONDENT(s).

(2)

Regular Second Appeal No.2263 of 1994 (O&M)

Saraswati Devi & Ors.

.....APPELLANT(s).

VERSUS

Wazir Chand Om Parkash & Ors.

.....RESPONDENT(s).

(3)

**XOBJ-17-C-1989 in/and
Regular Second Appeal No.2342 of 1988 (O&M)**

Saraswati Devi & Ors.

.....APPELLANT(s).

VERSUS

M/s Ram Sarup Kewal Krishan & Ors.

.....RESPONDENT(s).

(4)

Regular Second Appeal No.2380 of 1988 (O&M)

Smt. Saraswati Devi alias Sarusti Devi & Ors.

.....APPELLANT(s).

VERSUS

M/s Aggarwal & Co. & Ors.

.....RESPONDENT(s).

(5)

Regular Second Appeal No.2102 of 1991 (O&M)

M/s Amar Nath Kochhar & Sons

.....APPELLANT(s).

VERSUS

Smt. Saraswati Devi & Ors.

.....RESPONDENT(s).

(6)

Regular Second Appeal No.2328 of 1993 (O&M)

Saraswati Devi

.....APPELLANT(s).

VERSUS

M/s Maki Mal Kheta Ram & Ors

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashwani Chopra, Senior Advocate with
Mr. Akshit Chaudhary, Advocate
for the appellants(s) in RSA-1358-1994, RSA-2263-1994, RSA-
2342-1988, RSA-2328-1993 and RSA-2380-1988 and
for respondents in RSA-2102-1991.

None for the appellant(s) in RSA-2102-1991.

Ms. Radhika Suri, Senior Advocate with
Ms. Rajni Paul, Advocate for respondent No.1
in RSA-1358-1994 and RSA-2328-1993.

Mr. Ashok Jindal, Advocate
for respondent No.1 in RSA-2380-1988.

Mr. Sukant Gupta, Advocate
for respondent No.1 in RSA-2263-1994.

Mr. Surinder Garg, Advocate for
respondent No.1 in RSA-2342-1988 and
for cross-objector(s) in XOBJJS-17-C-1989.

SURINDER GUPTA, J.

RSA-1358-1994, RSA-2263-1994, RSA-2342-1988,
RSA-2328-1993 and RSA-2380-1988.

In all the above captioned appeals, the dispute pertains to the property owned by Gobind Lal resident of Goniana Mandi. Plaintiffs Saraswati Devi and others (appellants in RSA-1358-1994, RSA-2263-1994, RSA-2342-1988, RSA-2328-1993 and RSA-2380-1988 filed suits claiming their 3/5th share in the land measuring 25 kanals 17 marlas including the building and machinery over this land installed by Gobind Lal. The matter has since been settled between the parties, in view of the Will of Gobind Lal dated 30.03.1972 executed in favour of his sons namely Bhagwan Dass and Mohan Lal, which was upheld by the Court in various suits filed by Saraswati Devi and others. In civil suit No.559 of 1985 decided by the then Sub Judge 1st Class, Bathinda titled as 'Saraswati Devi and others Vs. Wazir Chand Om Parkash and others, it was observed in para 11 of the judgment while deciding the issue as to whether the plaintiffs(appellants) are owners in possession of the suit property as follows:-

“11. There is one another fact which is very important and cannot at all be over looked. The present suit is to the effect that the attachment of the property in dispute made by orders of the Addl. Senior Sub Judge, Bathinda dated 24.12.83 in the execution application filed by defendant No.1 and the report of the process server dated 24.12.83 and the order of the sale dated 17.7.85 were null and void and not binding upon the plaintiffs, because the share of the plaintiffs was not liable to said attachment and sale. Previously a suit was filed by the

present plaintiffs against the defendants to the effect that the sale deed dated 5.12.1983 in favour of defendant No.1 and the other sale deed in favour of defendant No.2 were void and not binding upon the plaintiffs. The claim was opposed by the plaintiffs in that suit on the same facts, in which they have opposed the claim in the present suit. That suit was decided by Sh.P.S. Bajaj, Addl. Senior Sub Judge, Bathinda and it was held therein that the plaintiffs were not the owners in possession of 3/5th share in the property in dispute, on the basis of entries in the copy of jamabandi and that of mutation. The will set-up by the defendants to have been executed by Gobind Lal was not accepted in that suit. Certified copy of that judgment placed by the defendants on the file is Ex.D16 and that of the decree sheet Ex.D17. Appeal was preferred against that judgment and decree by the plaintiffs, which was heard by Sh.K.K. Garg, learned Additional District Judge, Bathinda and was ultimately dismissed. Copy of that Judgment is Ex.D27 and that of the decree sheet Ex.D28. **It is really strange as to how the plaintiffs have now filed a second suit on the same facts, on which their claim had already been rejected by the courts. It is nowhere the case of the plaintiffs that any appeal against those judgments passed against them was pending in any court.** The only documents placed upon by the plaintiffs on the file are copy of Jamabandi Ex.P1 and copy of mutation Ex.P2. That mutation was sanctioned much after the death of Gobind Lal on the basis of natural succession and the entries in the Jamabandi were incorporated on the basis of that mutation. Much value cannot be attached to these two documents in the peculiar facts and circumstances of the case and the plaintiffs cannot be held to be owners and in possession of the

property in dispute to any extent.”

In appeal against the judgment of the lower Court in that case, the first Appellate Court observed as follows:-

“Earlier the present plaintiff-appellants had filed a suit against the defendant-respondents to the effect that the sale deed dated 5.12.1983 in favour of defendant No.1 and 2 were void and not binding upon them. **In that suit also the present plaintiff-appellants set up their claim to the extent of 3/5share while the sons of Gobind Lal pleaded will in their favour. This will executed by Gobind Lal was upheld and the present plaintiff-appellants were held to be not entitled to any share in the property left by Gobind Lal.** A copy of the judgment in the previous suit No.604 dated 4.12.1984 decided on 21.1.1987 is Ex.D16 and the decree sheet is Ex.D17. An appeal was filed by Saraswati Devi etc. but the same was dismissed vide judgment Ex.D27 of Sh.K.K. Garg, and the copy of the decree sheet is Ex.D28. **This decision was not further taken in appeal and as such would be binding on the parties. When once, the decision regarding the execution of the will in favour of Mohan Lal and Bhagwan Dass by Gobind Lal becomes final, the same cannot be re-agitated repeatedly and as such, the earlier decision would be binding.**”

During the course of arguments, learned counsel for the appellants could not refute this fact that the judgment passed in civil suit No.604 dated 4.12.1984 filed by Saraswati Devi and others has since become final after the dismissal of the appeal in that case by the Additional District Judge, Bathinda. The Court's finding that in view of Will executed by

Gobind Lal in favour of his sons, appellants Saraswati Devi and others cannot be held to be the owners of the property in dispute has attained finality.

As the matter has since been finally settled that plaintiffs Saraswati Devi, her sister Parkash Devi and Smt. Vidya have no share in the property left by Gobind Lal, who had bequeathed the same in favour of his sons through registered Will, the same is not required to be re-opened. The reason for the appellants Saraswati Devi and others for filing various suits appears to be to save the property of Gobind Lal and come to the rescue of their brothers Bhagwan Dass and Mohan Lal, who had lost the property left by Gobind Lal as it was attached and sold in auction in execution of various money decrees.

In view of my above discussion, I need not go in details of the facts and evidence on record in RSA No.1358 of 1994, RSA No.2263 of 1994, RSA No. 2342 of 1988, RSA No.2328 of 1993 and RSA No.2380 of 1988.

No substantial question of law requiring determination arises in these appeals, which have no merits.

Dismissed.

XOBS-17-C-1989 In RSA-2342-1988

In view of the fact that the matter regarding the property left by Gobind Lal has already been settled, learned counsel for cross-objector(s) has not pressed these cross-objections.

Dismissed being not pressed.

The substantial question of law that arises in this appeal is as follows:-

“In view of the finding that Saraswati Devi and her sisters have no right, title or interest in the suit property left by Gobind Lal, which has become final, whether the findings of the Courts below in this case holding share of Saraswati Devi and her sisters to the extent of 3/5th share in the suit property is sustainable.”

In view of what has been discussed above, plaintiffs Saraswati Devi and others have no right, titled or interest in the suit property, which was left by Gobind Lal. The substantial question of law is answered against the respondents and in favour of the appellant. The judgment and decree dated 28.09.1987 passed by Senior Sub Judge, Bhatinda declaring them owners of 3/5th share in the suit property and the judgment and decree dated 19.03.1991 passed by first Appellate Court, affirming the judgment and decree of lower Court are also set aside and this appeal is allowed.

September 21, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE