

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

R.S.A.No.2146 of 2011 (O&M)

Date of Decision: January 28, 2015

Joginder Singh & another

...Appellants

Versus

Kewal Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of 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?

**Present: Mr.Ashish Gupta, Advocate,
for the appellants.**

**Mr.A.P.Kaushal, Advocate,
for Mr.R.K.S.Brar, Advocate,
for respondent No.1.**

AMIT RAWAL, J.

This Regular Second Appeal is directed against the judgment and decree of the Lower Appellate Court dated 13.10.2010, whereby the appeal of the respondent-defendants has been allowed by reversing the judgment and decree dated 6.8.2007 of the trial Court, whereby the suit of the appellant-plaintiffs claiming declaration that the plaintiffs and defendant No.11 are the owners of the land measuring 65 kanals 1 marla, situated in the revenue estate of Village Malleana, Tehsil and District Moga and defendant Nos.1 to 10 have no right, title or interest in the suit land and as well as for possession as owners of agriculture land measuring 27 kanals 1

marla, had been decreed.

It would be relevant to extract the pedigree-table for the adjudication of the present appeal, as under:-



The plaintiffs claimed the declaration, mentioned above, on the ground that they are grand-sons of deceased Gurdit Singh and sons of Harnek Singh-defendant No.11 and Gurdit Singh, during his life time, executed a registered Will dated 30.11.1977 and as per the Will, Harnek Singh-defendant No.11 (father of the plaintiffs) was to get 1/3rd share and all the three plaintiffs in equal share were the heirs to the extent of 2/3 share. The other two sons of Gurdit Singh were Saggar Singh alias Sajjan Singh and Naginder Singh. Naginder Singh had died about two years back, whereas Saggar Singh alias Sajjan Singh is alive. Naginder Singh started claiming the right in the land left by Gurdit Singh and instituted a suit claiming himself to be owner of 1/3rd share and sought a restraint order by way of permanent injunction against Harnek Singh, Sajjan Singh and Mohinder Singh from ejecting him forcibly and illegally and otherwise in due course of law. The said suit was decreed by the trial Court vide judgment and decree dated 1.3.1982. Harnek Singh challenged the aforementioned judgment and decree by filing Appeal No.217 of 1984. The

Lower Appellate Court partly allowed the appeal in respect of few khasra numbers, however, the judgment and decree of the trial Court granting injunction in favour of Naginder Singh in respect of other two khasra numbers was set-aside and the suit in respect of the said khasra number was dismissed, whereas in respect of the remaining land, judgment and decree of the trial Court were upheld.

The present plaintiffs instituted suit (Ex.P6) on 11.10.1984, whereby they sought a declaration that they are owners in possession of the land bearing khewat No.284 and 288, khatauni nos.489, 490, 495 and 498, khasra Nos.60// 23/1-23/2-22/4-21-22/3, 44//17/2, 68// 1-3/2-2/1-3/1, 48// 16/1-16/2-17/1-17/2-21-22-23-24, 47// 20/1-20/2-20/3-20/4-21/2-21/2, 48// 25/1-25/2 as entered in the jamabandi for the year 1979-80, situated in village Malleana, Tehsil Moga and challenged the judgment and decree dated 1.3.1983 rendered in a suit titled Naginder Singh son of Gurdit Singh son of Bhola Singh Versus Harnak Singh and others to be illegal, void and not binding upon them and also challenged the judgment and decree dated 26.7.1984 rendered by the Lower Appellate Court. The said suit, vide Exs.P6 & P7, i.e., the judgment and decree dated 26.7.1990, was dismissed by the trial Court. In the said suit, the issue with regard to the execution of Will dated 30.11.1977 was also framed and the learned trial Court, while dismissing the suit, decided the issue against the plaintiffs. The said judgment and decree dated 26.7.1990 (Exs.P6 & P7) were assailed before the Lower Appellate Court.

During the pendency of the appeal, Naginder Singh stated to have executed seven sale deeds w.e.f. 1991 to 1997 and thereafter he

unfortunately expired. Since he had died issueless as there was no natural legal heir. It has come on record that after the death of Naginder Singh, a compromise Ex.CX dated 24.5.1997 was arrived at between the other brothers and sisters with Harnek Singh and on the basis of the compromise, the judgment and decree dated 1.3.1982 in a suit titled as Naginder Singh Versus Harnek Singh and others and as well as the judgment and decree of the Lower Appellate Court dated 26.7.1984 were set-aside.

The learned trial Court in the present suit also framed the issue with regard to the execution of the Will dated 30.11.1977, much less, the issue with regard to the fact whether the transfer of part of the suit property by Naginder Singh in favour of defendant Nos.1 to 10 had any effect on the rights of the plaintiffs and defendant No.11. On the basis of the oral and documentary evidence, the trial Court rendered the finding on issue No.1 in favour of the plaintiffs and against the defendants and while rendering the findings on other issues held that the sale of the land by Naginder Singh, vide seven sale deeds, was hit by the provisions of Section 52 of the Transfer of the Property Act. While giving the aforementioned finding, the trial Court decreed the suit of the appellant-plaintiffs.

The subsequent vendees-defendants challenged the judgment and decree of the trial Court dated 6.8.2007 by filing an appeal under Section 96 CPC.

The Lower Appellate Court, after examining both oral and documentary evidence and the legal proposition, allowed the appeal and set-aside the judgment and decree of the trial Court.

It is against the aforementioned judgment and decree of the

Lower Appellate Court, the appellant-plaintiffs have filed the present appeal.

Mr.Ashish Gupta, learned counsel appearing for the appellants, in support of his argument, submitted that the trial Court had rightly decreed the suit of the appellant-plaintiffs by holding that the seven sale deeds executed by Naginder Singh in favour of the defendants was hit by the provisions of Section 52 of the Transfer of Property Act. He further argued that the Lower Appellate Court has misread the compromise Ex.CX and, therefore, the Lower Appellate Court has committed an illegality and perversity in setting-aside the well reasoned judgment and decree of the trial Court. In support of the aforementioned argument, he further submitted that the findings rendered by the Lower Appellate Court that the judgment and decree dated 24.5.1997, which was rendered on the basis of the compromise cannot be said to be collusive because no issue with regard to the said aspect had been framed and, thus, urged that the present appeal involves the following substantial questions of law for determination of this Court:-

- a) Whether in absence of any pleading or evidence regarding collusive nature, the ld.Lower appellate court can itself hold the proceedings as to be collusive?
- b) Whether the transfer of property by Naginder Singh during the pendency of the appeal will be hit by the principle of lis-pendence?
- c) Whether the decree passed on compromise can be said to fall within the ambit of collusive as per Section 52 of the Transfer of Property Act?

- d) Whether the transferees need to be impleaded when the sale has taken place during the pendency of the appeal?
- e) Whether the transferee can have better title than the vendor?
- f) Whether if the suit is decreed against the vendor, can the transferee claim the plea of bona fide purchase for valuation when the sale is made during the pendency of the litigation?
- g) Whether the ld.Lower appellate court is justified in commenting upon the judgment and decree passed by the ld.ADJ in earlier round of litigation which has attained finality in the present appeal before him?
- h) Whether the judgment and decree passed by ld.Lower appellate court is against the settled law and is based upon surmises and conjectures?
- i) Whether the judgment and decree passed by ld.Trial court is based upon proper appreciation of law and facts?

Mr.A.P.Kaushal, learned counsel appearing for respondent No.1 has, in support of his contention, submitted that the Lower Appellate Court has rightly set-aside the judgment and decree of the trial Court as the compromise Ex.CX, had actually suffered from an apparent collusion between the siblings and the said compromise cannot be said to have a binding effect on the legal right of Naginder Singh, much less, on his legal representatives. He further submitted that once the Will had already been disbelieved in the earlier Court, therefore, there was no occasion for the trial Court to render the finding qua the Will again in the present proceedings.

As far as the applicability of Section 52 of the Act, he submitted that the property had already been partitioned amongst the sons of Gurdit Singh and this fact had already been noticed in the judgment and decree dated 26.7.1990 (Ex.P6) while rendering the finding on issue No.2. For the sake of brevity, the findings rendered on issue No.2, vide Ex.P6, are extracted herein below:-

“It has been admitted by both the parties that the will executed by Joginder Singh in favour of his three sons Naginder Singh, Saggar Singh and Harnek Singh dated 24.8.73, was accepted by the Civil Court as well as the revenue officers whereas the will dated 30-11-77 alleged to have been executed by Gurdit Singh in favour of Harnek Singh alone and his sons Joginder Singh, Ajmer Singh and Nahar Singh (present plaintiffs) was rejected by the Civil Court as well as Revenue authority. The parties further admitted that partition proceedings also started between the parties and ultimately in the partition proceedings, suit land was partitioned. The order of the Tehsildar acting as Assistant Collector Ist Grade Moga in the partition proceedings is Ex.DW2/A vide which the parties were put into possession of their respective shares. Sanad taqusim was also prepared so as a result of those proceedings defendant no.1, 2 and 3 were put into possession of their respective shares as is evident from Sanad Taqusim of 21-12-1987 and as per the copy of khasra girdawari Ex.D4, defendant Naginder Singh has been shown in possession of 47// 20/1-20/2-20/3-20/4-21/1 21/2- and 48// 25/1 and 25/2. It is also evident from the copy of jamabandi produced by the plaintiffs themselves which is Ex.P2. Moreover the copy of jamabandi Ex.P2 for the year 1979-80 shows that Chuhar Singh, Harnek Singh and Naginder Singh are in possession of the suit land and not the plaintiffs. So the plaintiffs have failed to prove their possession over the suit

land. As discussed and held in issue No.5-A and 1 above, the plaintiffs are not the owners of the suit land as the will in their favour alleged to have been executed by Gurdit Singh has already been rejected by the competent court. So I hold that plaintiffs are neither owners nor in possession of the suit land and decide this issue against the plaintiffs and in favour of the defendant.”

In support of his submission, learned counsel appearing for respondent No.1 has relied upon the following judgments:-

- “a) Venkiteswara Pai Vamana Pai Versus Kunju Vava Mahomad Ali and others, AIR 1952 Travancore-Cochin 309;
- b) Lekshmi Gnanapakiam Versus Thynes Nadar Ponnian Nadar, AIR 1955 Ttravancore-Cochin 3;
- c) Ramanagouda Siddanagouda and others Versus Basavantraya Madivalappa, Mulimani and others, AIR 2002 Karnataka 96;
- d) Gurmel Singh and others Versus Attar Kaur and another, 1984 Revenue Law Reporter 169;
- e) Mrs.Vijaya Shrivastava Versus M/s Mirahul enterprises & others, 2006(3) RCR(C) 740;
- f) Bhagwan Bai Versus Chiranji Lal and another, 2009(5) RCR (C) 787; and
- g) Hardev Singh Versus Gurmail Singh (Dead) by LRs., 2007(1) RCR(C) 876.”

I have heard the learned counsel for the parties and appraised the impugned judgment and decree and as well as the record of the trial

Court with their able assistance and of the view that the present appeal is liable to be dismissed.

Admittedly, the compromise Ex.CX effected by the other siblings of Naginder Singh would not be binding upon Naginder Singh as the said compromise was not between the parties to the lis. It is a matter of record that Naginder Singh had died and his legal representatives were not brought on record. The Lower Appellate Court noticed in paragraph 35 of the judgment the various sale deeds executed by Naginder Singh in favour of the respondents. It is also matter of record that registration of the document is a notice to the entire world and it cannot be believed that brothers and sisters of Naginder Singh did not have any knowledge that Naginder Singh had executed the sale deeds and it was incumbent upon them to implead the present respondent-defendants before arriving at alleged compromise. Naginder Singh had already filed a written statement in the suit dated 11.10.1984 instituted by the present plaintiffs and since Naginder Singh had died issueless and even his brothers and sisters are/were collateral and, therefore, could not have taken a different stand than the one taken by Naginder Singh and, therefore, compromise was beyond the stand taken in the written statement filed by Naginder Singh. In other words, defendant Nos.4 to 9 in suit of 1984 could not have taken a plea contrary to the defence taken by Naginder Singh in the written statement despite the fact that they were not arrayed as legal representatives.

It is apparent that the alleged compromise was arrived at between the parties to defeat the right of Naginder Singh, who had already sold his share to the defendant/respondents. The trial Court, while relying

upon the judgment dated 24.5.1997, treated the suit on merits, whereas it was not on merits but based on a compromise to which the present plaintiffs were not the parties.

As regards the plea that the sale transactions effected by Naginder Singh were hit by the doctrine of lis-pendence as per provisions of Section 52 of the Transfer of Property Act, it is held that the partition had already been effected between Naginder Singh and his brothers and this fact was admitted by Harnek Singh as noticed in judgment Ex.P6. Even the mode of partition was also prepared and Harnek Singh, Sajjan Singh and Naginder Singh were put in possession of the respective share and Naginder Singh was put in possession of respective khasra numbers, therefore, the plaintiffs did not have any right or claim, much less, any interest in the said property. As per the judgment Ex.P6 produced by the plaintiffs, the partition had been effected between the parties and, therefore, there was no question of seeking any joint possession and, therefore, the provisions of Section 52 of the Transfer of Property Act would not come to the aid of the appellants.

The judgments cited by the learned counsel appearing for respondent No.1 are applicable to the facts and circumstances of the case, wherein it has been held that where the decree has been collusive one, the doctrine of lis-pendence would not be applicable, particularly against the transferees. The defendant/respondents herein are also transferees and have acquired the right, title and interest by virtue of the sale deeds executed in their favour by Naginder Singh.

In view of what has been observed above, there is no substance in the arguments of the learned counsel for the appellant-plaintiffs. The

Lower Appellate Court has rendered a finding of fact and law, based on appreciation of oral and documentary evidence, much less, law. No substantial question of law arises for adjudication of the present appeal. The judgment and decree of the Lower Appellate Court are upheld. Accordingly, the suit of the appellant-plaintiffs is dismissed.

Accordingly, the appeal is dismissed.

There shall be no order as to costs.

January 28, 2015
ramesh

(AMIT RAWAL)
JUDGE