

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 28.8.2015

1. SAO No.12 of 2012 (O&M)

Tapinderjit Kaur GrewalPetitioner

Versus

Rattanjit Kaur and others**Respondents**

2. SAO No.13 of 2012 (O&M)

Tapinderjit Kaur GrewalPetitioner

Versus

Harjinder Singh and others**Respondents**

3. SAO No.14 of 2012 (O&M)

Tapinderjit Kaur GrewalPetitioner

Versus

Fateh Singh and others**Respondents**

4. SAO No.15 of 2012 (O&M)

Tapinderjit Kaur GrewalPetitioner

Versus

Rattanjit Kaur and others**Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Vikas Bahl, Sr. Advocate with
Ms.Japneet Kaur, Advocate,
for the appellant(s).

Mr.A.P.Kaushal, Advocate
Mr.Sandeep Jain, Advocate and
Mr.Manpreet Singh Longia, Advocate,
for the respondents.

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?

RAJ MOHAN SINGH, J.

1. By this common order four SAO Nos. 12, 13, 14 and 15 of 2012 are being disposed of. Facts are being taken from SAO No.12 of 2012.

2. In this appeal, judgment and decree dated 30.11.2011 passed by Additional District Judge, Shaheed Bhagat Singh Nagar has been assailed, vide which judgment and decree dated 31.3.2008 passed by the trial Court has been set aside and the case has been remanded to the trial Court to decide afresh after framing issues and also to decide issue of guardian of minor defendants. However, no fresh evidence is required to be led as the parties have already stated in that context. Further it has been directed that party should be given chance to lead evidence on the issue if they so desire and the previous evidence already led may be read in newly framed issues also as well as in the issues already framed but not decided by the trial Court.

3. The salient features of the case are that plaintiff Tapinderjit Kaur Grewal is natural mother of defendants No.3 and 5, who were minor at the time of filing of the suit.

Defendants No.1 and 2 are parents-in-law of plaintiff Tapinderjit Kaur. Defendant No.1 Gurmej Kaur, mother-in-law, died and she has been represented by Rattanjit Kaur, her daughter. A suit for declaration was filed by the plaintiff to the effect that she is owner in possession of land shown in annexures attached with the plaint on the basis of Will dated 28.1.1990 executed by her husband, Paramjit Singh Grewal (deceased). The Will dated 7.2.1990 was claimed to be not binding upon the plaintiff being forged and fabricated. Plaintiff filed a suit in respect of 41 kanals 3 marlas of land, 40 kanals of land and 1/3rd share of 38 kanals of land on the basis of aforesaid Will. All the three parcels of the land have been well defined in the plaint itself. Husband of the plaintiff, namely, Paramjit Singh Grewal, died on 9.2.1990. The suit in question was filed on 16.9.1992 by the plaintiff against defendants No.1 to 5.

4. Trial Court, vide judgment and decree dated 3.5.2000 rejected both the Wills and decided the case on the basis of natural succession, giving 1/4th share to the plaintiff. Operative part of relief clause of the judgment dated 3.5.2000 is reproduced here-in-below:-

“17. I, in the light of above said discussion on the above said issues, am of opinion that none of the party i.e. either Plaintiff or legal heir of defendant No.1 Gurmej Kaur and Defendant No.2 has been able

to prove their respect Wills Ex.PI and Ex.DI. Consequently, both the Wills are to be discarded and the sui tis to be decreed according to the natural course of succession and I hold that in view of the natural couse of succession, the share of the Plaintiff comes to 1/4th share in the suit land which has been fully described in the head note of the plaint and she got 1/5th share on the death of Paramjit Singh Grewal and 1/20th share on the death of Gurmej Kaur, mother-in-law. Apart from this, the plaintiff according to her share is also entitled for the possession of the land. With these observation, the alternative relief stands decreed, but in the peculiar circumstances of the case, no cost has been awarded. Decree sheet be prepared. File be consigned to the record room.”

5. A perusal of the aforesaid judgment reveals that the same is not prejudicial to the interest of the minor children in any manner. As on today minors have become major. Against the aforesaid judgment and decree, original defendants filed appeal on 5.8.2000. Harjinder Singh and Swaran Singh filed an application under Order 1 Rule 10 CPC. The said application was allowed on 20.8.2005. Harjinder Singh and Swaran Singh were implicated as respondents No.5-A and 5-B respectively.

However, the application of Shingara Singh and others was

dismissed. Case was remanded to the trial Court for calling the report after adding Harjinder Singh and Swaran Singh as additional defendants. Plaintiff also filed amended plaint impleading Harjinder Singh and Swaran Singh as defendants No.5-A and 5-B respectively in the original suit. Defendants No.5-A and 5-B filed their written statement and contested the suit.

6. Two additional issues were framed i.e. 5A “whether the applicants are bonafide purchasers ? OPD” and 5B “whether the suit has been filed by the plaintiff in collusion with defendants No.1 to 5 in order to cheat and defraud the defendant? OPD.” After receiving the evidence and hearing the parties, trial Court vide judgment and decree dated 24.9.2005 held issues No.5A and 5B in favour of the plaintiff and against the added defendants No.5A and 5B.

7. Against the aforesaid judgment, added defendants No.5A and 5B filed the appeal on 25.11.2005.

8. Against the order, dismissing the application under Order 1 Rule 10 CPC of Shingara Singh and others, a revision petition was filed in this Court, which was allowed on 11.7.2007 and Shingara Singh and others were ordered to be impleaded as defendant Nos. 6 to 53. Trial Court was directed to furnish its report to the Additional District Judge. On receipt of such report, first Appellate Court would be at liberty to dispose of the appeal

on merits.

9. On 20.9.2007, issues were framed by the trial Court. It is relevant to state here that on 12.11.2007, defendants No.6 to 53 were proceeded against ex parte. Trial Court passed an order dated 29.11.2007, deleting the issues and observed that only in respect of issue No.6, findings are to be given. Issue No.6 was to the effect that whether defendants No. 6 to 25, 27, 28 and 30 to 63 are the bona fide purchasers for valuable consideration, without notice and in good faith of their respective property as claimed ? OPD (defendants No.6 to 25, 27, 28, 30 to 63). The said order has already attained finality.

10. On 8.12.2007, defendants No.6 to 53 were, however, permitted to join the proceedings from the stage at which the case was pending on 8.12.2007. This permission was granted after the order dated 29.11.2007, wherein issue No.6 was held to be the only issue to be decided by the trial Court.

11. On 31.3.2008, trial Court decided issue No.6 in favour of the plaintiff. Appeal was filed by Fateh Singh and others. In this way, three appeals were filed. First by original defendants (that has its own history to explain). Second by defendants No.5A and 5B against the order dated 24.9.2005. Third by Fateh Singh and others against the decision of issue No.6 by the trial Court and 4th appeal was also filed by defendants No.1

and 2.

12. Vide the impugned judgment of remand dated 30.11.2011, the lower Appellate Court directed the trial Court in the manner as mentioned in the preceding para.

13. Learned counsel for the appellant has contended that the lower Appellate Court remanded the case to the trial Court in utter disregard to mandatory requirement of law. For ready reference, the operative part of the judgment passed by lower Appellate Court in para 22 of the judgment reads as under:-

“22. As such, impugned judgment is set aside and the case is remanded to the learned lower court to frame issues as per pleadings of the parties and to also decide the issue of guardian of the minor defendants and then decide the suit afresh. Parties have already stated before the learned lower court that no fresh evidence is required to be led by any of the parties. However, parties should be given chance to lead evidence on the issues if they so desire and the previous evidence already led on the file may be read in the newly framed issues or issues already framed, but not determined by the learned lower court as discussed above. Lower court file be returned immediately while appeal files be consigned to the record room. Parties through counsel are directed to appear in the learned lower court on

22.12.2011.”

14. Learned counsel further submitted that the lower Appellate Court was under legal obligation to set aside the findings on all the issues at the time of making remand to the trial Court. All the issues had already been decided by the trial Court. Even if some issue was left out, then the lower Appellate Court could have asked for a report instead of remanding the case in toto. Learned counsel also submitted that in terms of Order 32 Rule 3 CPC only minors were competent to agitate the issue on their behalf. Minors have already attained majority. Even in the present appeal, the minors on attaining majority are being represented by their lawyer and they have no grievance against the judgment and decree passed by the trial Court.

15. Learned counsel appearing on behalf of defendants No. 3 to 5 (now major) stated before the Court that their interest is secured in the hands of plaintiff, Tapinderjit Kaur. Learned counsel also made reference to the findings given by the trial Court under issue Nos. 1 and 2 in para Nos. 7 to 9 of the judgment and decree dated 3.5.2000. In respect of issue No.3, findings were recorded in para Nos. 11 to 13 of the judgment. In respect of issue No.4, findings were recorded in para No.14 of the judgment and qua issues No. 5-A and 5-B findings were recorded in para No.16 of the judgment. The then minors do not intend to challenge the issue any more, rather they feel

contended with the relief already granted to them by the trial Court.

16. Additional issues No.5-A and 5-B already stood decided in the report after the added respondents No.6 to 53 were proceeded against ex parte. Vide order dated 29.11.2007 only issue No.6 was considered to be the issue on which findings were to be recorded and that order became final. Defendants No.6 to 53 were only allowed to join proceedings vide order dated 8.12.2007 from the stage at which the case was pending on 8.12.2007. For the purpose of clarity, para No.7 of the report given by the trial Court can be appreciated, which is as under:-

“ On the basis of the above amended pleadings, the issues were framed on 20.9.2007. In the meantime, the newly added defendants, that is, defendants No.6 onwards also did not turn up on 12.11.2007 and therefore, they too were proceeded against ex-parte. On noticing that only those issues which pertained to the newly added parties and were necessary, the rest of the additional issues framed earlier were deleted and resultantly, the findings was ordered to be given regarding the following additional issue:-

6. Whether the defendants No.6 to 25, 27, 28 and 30 to 63 are the bonafide purchasers, for

valuable consideration, without notice and in good faith of their respective property as claimed ? OPD 6 to 25, 27, 28, 30 to 63.”

17. In para 8 of the said report, reference of allowing defendants No.6 to 53 to join proceedings from the stage at which the case was pending on 8.12.2007 has been made. Obviously, this permission was granted to the defendants only after the order, when issue No.6 was held to be the only issue to be decided by the trial Court vide order dated 29.11.2007. For ready reference, para 8 of the report is reproduced here-in-below:-

“During the subsequent trial, an application filed by the defendants No.6 onwards to set aside the order vide which they had been proceeded against ex parte, was disposed of by permitting these defendants to join the proceedings from the stage at which the case was pending at that time, that is, on 8.12.2007.”

18. Issue No.6 was decided in favour of the plaintiff. The relevant portion of the report is reproduced as under:-

“XX XXX XXX XXX XX

Under the above discussed attending circumstances of this case and the law on the subject, it can safely be held that the defendants No.6 onwards have failed

to prove that they are the bonafide purchasers, and the main reason for the same being that they are not found to have made proper enquiries and had not taken reasonable care before purchasing the property in question.

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In so far the plea raised by the defendants No.6 onwards that the plaintiff did not issue any notice to the public at large either regarding her own claim and to warn the prospective purchasers regarding her ownership over the land is concerend, the same again does not affect the case of the plaintiff because she had already filed the suit and all the sale deeds were executed during the pendency of this case. Therefore, even this plea of their defendant No.6 onwards, is found to be devoid of merit.”

19. The order dated 11.7.2007 passed by this Court in Civil Revision Nos. 210 of 2006 and 4720 of 2005 , allowing defendants No.6 to 53 to be impleaded as party defendants in the suit involving framing of issues is referable to the subsequent vendees only.

20. First appeal filed before the lower Appellate Court has its own background. Apparently, the then minor defendants were

also shown to be the appellants, whereas they have no such conflict existing. Only two persons are shown to have signed the GPA. Minors have not signed in any capacity. They are still with the plaintiff. Grounds of appeal have not been signed by the minors, nor by any guardian appointed on their behalf. This fact is apparent from the grounds of appeal alleged to have been filed on their behalf in which only Rattanjit Kaur and Balwant Singh signed as appellants. These two persons were not having any authority to file any appeal on behalf of the then minors. Respondents No.6 to 53 are apparently vendees lis pendens.

21. Learned counsel for the appellant has relied upon **Suraj Bhan vs. Gram Panchayat Juppa Khurd 2001 (4) RCR (Civil) 666** on the premise that the lower Appellate Court could have asked for report under particular issue if at all the same was not decided. The remand was wholly illegal. In **Kartar Singh vs. Punjab and Sind Bank and others, 1988 (2) RRR 334**, this Court observed that re-trial by the trial Court is considered necessary only when the Court gives findings on all the issues and the same are set aside. The Court is not authorised to reverse the judgment and decree as a matter of course. In **Harikishan vs. Smt.Anandi 2006 (4) RCR (Civil) 540** the Court came to the conclusion that framing of additional issues on amended plaint and remanding the case without

following the procedure under Order 41 Rule 23 and 23-A CPC is wholly unjustified. Appellate Court could have asked for report from the trial Court on the particular additional issue alone. In

P.Purushottam Reddy vs. M/s Pratap Steels Ltd. 2002 (2)

RCR (Civil) 70, Hon'ble Apex Court while interpreting Order 41 Rules 23A and 25 CPC ruled that Rule 23 CPC applies only where trial Court disposes of the entire suit by recording its findings on a preliminary issue without deciding other issues. Rule 25 contemplates a limited remand to try only such issues as are referred to it for trial. The trial Court cannot have recourse to its inherent powers to make a remand where express provisions are available dealing with the situation. The Appellate Court could have decided the appeal itself on the basis of available evidence as the trial Court had already decided all the issues and the additional issues were also decided in the report submitted by the trial Court. There was no legal impediment in deciding the appeal by the lower Appellate Court on merits.

22. At last, learned counsel submitted that Order 32 Rule 3 CPC in the context of minors provides that if minor attains majority on date when no decree was passed against the minor or their interest and the minors do not opt to get it annulled, rather showed their willingness to adopt it, the other defendants have no grouse qua the interest of the then minors. No decree

passed against the minor shall be set aside merely on the ground that next friend or the guardian for the suit of the minor has an interest in the subject matter of the suit adverse to that of minor, but such decree could be set aside only if by reason of such adverse interest of the guardian or the next friend, prejudice has been caused to the interest of the minor. Reference can be made to the aforesaid proposition in the light of observation made by this Court in **Bharpur Singh vs Paramjit Kaur and others 2010 (2) RCR (Civil) 85.**

23. It is settled proposition of law that if the minor attains majority during pendency of appeal but does not move to put his defence or to object to the decree at that stage, it may be deemed that they have adopted the proceedings and will be bound by the result of the litigation. In the instant case what to talk of filing any objection, the minors on attaining majority are being represented by their lawyer in the Court and have no objection to the course adopted by the plaintiff. It is only a gross and culpable negligence on the part of the guardian that may be sufficient for the minors to get the decree set aside.

24. On the other hand, learned counsel for the respondents submitted that that in terms of Order 32 Rule 3 CPC, if the guardian was not appointed as per the provisions, suit is liable to be dismissed as the provision is mandatory. In

support of aforesaid submissions, learned counsel cited **Baldev**

Singh and others vs. Sukhdev Singh and others 2006 (3)
RCR (Civil) 76; Raj Kumar vs. Rohtash 2010 (3) PLR 187 and
Virat Pal and others vs Mam Raj and others 2011 (2) PLR
250.

25. A perusal of the record shows that minors were represented by their guardian. The decree cannot be treated to be void merely on the ground that the next friend or the guardian has an interest adverse to the minor but such decree could only be set aside when it is demonstrated that a prejudice has been caused to the interest of the minor. Here is a case in which no prejudice is shown to have been caused to the interest of the minor. The minors on attaining majority are with the plaintiff. The afore-cited judgments have no application to the facts of the present case.

26 Looking to the entirety of the facts and circumstances of the present case, I am of the considered view that the impugned judgment passed by the lower Appellate Court, remanding the case to the trial Court for fresh decision, is wholly illegal and is not sustainable in the eyes of law.

27. Hence, the appeals are allowed. Consequently, impugned judgment dated 30.11.2011 passed by Additional District and Sessions Judge, Shaheed Bhagat Singh Nagar is set aside. Direction is issued to the lower Appellate Court to decide the appeal on merits. If it finds that some report is

needed in terms of Order 41 Rule 25 CPC, the same can be asked for in accordance with law.

(RAJ MOHAN SINGH)
JUDGE

August 28, 2015
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