

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.627 of 2013 (O&M)
Date of Decision.26.08.2015

Mehar Chand

.....Appellant

Versus

Smt. Chander Kanta and another

.....Respondent

Present: Dr. Praveen Hans, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The second appeal is at the instance of the plaintiff who sought for a declaration that the mutation entered after the death of the father granting to the contesting defendant-daughter an equal 1/3rd share along with him was erroneous. It was on the basis that the property was ancestral in character and the daughter had only a 1/9th share since the father had died before coming to the force Hindu Succession Amendment Act, 2005. The plaintiff also relied on an alleged Will said to have been executed by the mother in respect of her share which, according to the plaintiff, was 4/9th share and as per the bequest, he had got whatever the mother was entitled to and the defendant-daughter was entitled only to 1/9th share.

2. As regards the property which was held by the father, the Appellate Court had found that it was joint family property but all the same, it observed that mutation entered granting to the widow, son and

daughter equally was correct but it proceeded to hold that the Will said to have been executed by the mother was not true. It, therefore, found that the mutation entering 1/3rd share in the daughter was not liable for interference.

3. In appeal filed by the plaintiff, the Appellate Court modified even the finding regarding the character of property as ancestral and held that the property in the hands of the father was a bequest in his favour by his father Panju Ram and property obtained by the father on bequest cannot be treated as ancestral property. He further affirmed the decision regarding the Will by holding that the plaintiff had examined only the attestor and he did not know even the person who scribed the document. The Will was said to have been typed and the Court also elicited evidence of the witness Balwant that he did not know who typed the document. Yet another witness to the document had not been examined and the nature of evidence given by the witness was not sufficient to evoke the confidence of Court to uphold the Will alleged to have been executed by the mother. The Court also took note of the fact that the Will had also not been registered. I find that the non-registration of the Will was not a material fact but it took among other instances as not evoking the confidence of the Court and proceeded to affirm the finding rendered by the trial Court.

4. Learned counsel appearing on behalf of the appellant states that the grandfather Panju Ram had no right to execute the Will and it is not approved by Hindu Law. According to him, the principle of acceleration through bequest will make the property taken by the father as constituting the character of joint family property. I find the principle

advanced to be wholly erroneous. The counsel refers to following judgments in support of his plea.

5. In Smt. Raj Rani Vs. The Chief Settlement Commissioner, Delhi and others AIR 1984 SC 1234, the Court was considering the effect of devolution of coparcenary property and it was considering the manner of devolution with reference to ancestral property where reference to Section 6 was made. The Court was dealing with determination of share in a coparcenary property where a person died after the enforcement of the Act leaving behind him widow, three sons and three daughters, the devolution of Mitakshara coparcenary property would be as per Explanation 1 to Section 6 and he would have got 1/5th share on partition between him and his wife and three sons. If once his interest was determined to be 1/5th before his death, his interest would devolve upon his widow, three sons and three daughters equally. The Court was considering the case of devolution in relation to property in Ferozepur. The plaintiff has to cross major obstacles before he has any reliance on this judgment, for, the case was on an admitted premise that the property was ancestral in character. Here the point that has to be considered is whether the property held by the father was ancestral in character and whether there has been property which would be possible for a widow to take at a notional partition. I will have use of application of this judgment if it is shown that the property is ancestral. Other judgments sought by the counsel are Geja Singh Vs. Jagga Singh and others 2009(4) PLR 332 and Raj Rani Vs. Radhey Sham and another 1994(2) PLR 681. Both of them were holding the manner of distribution in respect of ancestral property. I have already held that these decisions

will have relevance only if there is a proof of ancestral property. Yet another reference is to a judgment in *Pritam Singh Vs. The Assistant Controller of Estate Duty, Patiala 1976 PLR 342 (FB)*. The case was with reference to the Jat Sikhs as being governed by the Customary Hindu Law in matters of succession. A Hindu who was governed by rules of customary law in matter of succession would obtain a joint family interest and such interest will be by birth. I do not understand as to how this judgment has relevance in a situation where the point that has still to be proved is whether the property is ancestral or not. In *Commissioner of Gift Tax, Patiala-II, Patiala Vs. Man Singh 1980 CLJ (Civil) 447*, the Court was considering the case of gift of ancestral property. Gift of ancestral property stands completely on a different footing, for, gift and bequest of ancestral property which were not valid suffered a serious dent by the provision under Section 30 of the Hindu Succession Act which makes possible a bequest through a Will in respect of undivided share but Hindu Succession Act itself contains no reference of saving of gift of ancestral property. The bar against gift of ancestral property still remains and the decision relating to the nature of transaction by gift cannot apply to bequest since it is covered under Section 30 of the Hindu Succession Act which makes valid a bequest in respect of ancestral property. The judgment in *Commissioner of Gift Tax, Patiala-II, Patiala's case* is, therefore, not applicable. *Babru Vs. Basakha Singh 1995(3) RRR 31* was with reference to the Hindu Succession Act as not abolishing the concept of Hindu Joint Family. I also do not find that there is any principle of Hindu law which is abolished except to the extent that widow enjoys a share and woman takes a right

absolutely which was not possible under the old Customary Hindu Law. It has also introduced new concepts of deemed coparcener for a daughter which was not possible under the earlier dispensation before coming into the force of the Hindu Succession Amendment Act, 2005. *Sher Singh and others Vs. Gamdoor Singh 1997(2) RRR (Civil) 39* was a case relating to a coparcenary property and a right by birth was stated to exist. This judgment does not apply, for, we are not confronting with such an issue here. *Manohar Lal Vs. Dewan Chand and others 1985 LXXXVII PLR 689* was a case relating to sale of coparcenary property and son's challenge was sought to be upheld on consideration that if the sale was not for binding necessity, the sale will not bind the son. That principle has no value here in our case. *Gurdas Ram Vs. Sukhdevi and another 2004(1) RCR (Civil) 363* was also case relating to gift of ancestral property where it was held that it is void. I have already explained the difference between the gift of ancestral property and bequest in relation to ancestral property. *Dwarampudi Nagaratnamba Vs. Kunuku Ramayya and another AIR 1968 SC 253* was a case relating to power of joint family manager to alienate the property. We are not discussing the issue of alienation to ancestral property, for, a bequest does not take the character of alienation. If it is bequest in relation to separate property of a person, the judgment does not even apply. *Hari Singh Vs. Ram Dhari and others 1976 LXXXVIII PLR 558* was a case with reference to sale in respect of ancestral property which was set aside on the ground that there had been no proof of sale as being supported by a necessity. In *Punjab Kaur Vs. Mohinder Singh 2002-2 CXXV PLR 380* the issue was with reference to an unregistered Will and

if after execution was proved, the Court said that unregistered Will could prevail. I have already pointed out that the issue of whether a Will is true or not can never be determined in the context of whether the Will was registered or not. The case has to be assessed on the basis of evidence and the Court found that there was no adequate evidence, non-examination of the scribe and yet another witness and it took note also of the fact that the Will was unregistered and there was no reason given for non-registration. This proposition has also no application to the present case. In **Daulat Ram and others Vs. Sodha and others AIR 2005 SC 233**, the Court was considering the issue of burden of proof and was examining the issue of the suspicious circumstances relating to the Will. There was evidence of scribe and attesting witnesses that the testator on his own volition executed the Will in favour of the respondent. I cannot understand the relevance of this judgment, for, truth and genuineness of the Will is invariably an issue of fact and law and if the facts bring out a case that the Will had not been proved then the examination of law pales into insignificance. There can be instances where application of law to the facts could be wrongly applied. I find no such fallibility in the judgments which are now challenged in the appeal.

6. The counsel would also refer to me to the judgment in **Balwant Singh Vs. Gurbachan Singh and another AIR 1939 Lahore 286** where there was gift of ancestral property. I have already examined that the gift of ancestral property is different. I find the attempt of the counsel is only to bamboozle the Court and make it appear as though he has a strong case to contend by reference to several judgments, most of which are irrelevant. The attempt of counsel must be to assist the Court

to come to the correct conclusion and not to filibuster by referring to irrelevant decisions. It is sheer waste of time on the part of the counsel by engaging the Court in unnecessary lengthy discussion on judgments irrelevant to the case. I have still examined them to make sure that in the ultimate dispensation which I have taken, no point is left unaddressed and I have not violated any principle of natural justice.

7. There is simply no scope for making an intervention with the judgments passed by the Courts below. I find no substantial question of law arising for consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 26, 2015
Pankaj*