

121-A.

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

Regular Second Appeal No.1611 of 2015 (O&M)

Date of decision: 01.12.2015

& Regular Second Appeal No.640 of 2015 (O&M)

Jaspal Kaur and others

... Appellants

versus

Tej Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.S. Ranghi, Advocate,
 for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. Both the appeals are against the suit which was instituted by the plaintiffs seeking for 1/4th share for the 1st plaintiff and assailing a lease of 1/4th share executed by one Joginder Singh in favour of contesting defendant. The 2nd plaintiff was claiming herself to be the daughter of Joginder Singh and the defendant was interested in denying the status and her right to challenge the lease executed by Joginder Singh. The trial court found the lease to be valid and also held the 2nd plaintiff to be the daughter of Joginder Singh. The plaintiffs preferred the appeal upholding the lease and

the defendant preferred the appeal in Appeal No.141 of 2011 challenging the finding that Gurdev Kaur-2nd plaintiff was the daughter of Joginder Singh. The appeal filed by the plaintiff was allowed and the appeal filed by the defendant was dismissed.

2. As regards the finding regarding the status of Gurdev Kaur-2nd plaintiff as the daughter of Joginder Singh, the appellate court observed that the marriage of Joginder Singh with Joginder Kaur was an admitted fact, but the defendants were pleading a case of divorce and that the daughter born to Joginder Kaur cannot be said to be the daughter of Joginder Singh. The court held that the divorce was not established and if a child was born out of the lawful marriage of Joginder Singh with Joginder Kaur, the child must be taken as conclusively proved to be the legitimate child of Joginder Kaur with her husband Joginder Singh by invoking Section 112 of the Evidence Act. The decision is correct and it would not require to be interfered with. The appeal filed in RSA No.1611 of 2015 against the judgment in Appeal No.141 of 2011 would, therefore, require to be dismissed and accordingly, dismissed.

3. As regards the finding that the lease effected with reference to the share of Joginder Singh in the year 1997, the court held that the property was ancestral and the lease for a period of 90 years must be taken as constituting an alienation and hence, invalid. The reasoning is untenable ex facie, for, even every lease

irrespective of the period amounts to alienation. The point is whether the daughter claiming as such had a right to challenge an alienation made by the father during his lifetime. There was no fetter against alienation even in respect of ancestral property which could be impeached only by a co-parcener. An alienation made by a father/co-parcener cannot be impeached by a daughter, for, her status as deemed co-parcener would arise only by a change of law by the amendment in Hindu Succession Act, 2005. If Joginder Singh himself had not challenged the alienation during his own lifetime for any vitiating circumstance, the point that would require to be shown was whether a daughter could challenge such alienation. The second appeal i.e. RSA No.640 of 2015 is admitted on consideration of the following substantial question:-

- i) Whether on the assumed basis that the property was ancestral in the hands of Joginder Singh, whether the lower appellate court was not in error in finding that the daughter could challenge the same, failing to note that she had no subsisting right in the property of the father during his lifetime and if the father himself not challenged the same, she was not competent to challenge the same?
- ii) Whether the discussion on a point of limitation not irrelevant, if the daughter had no right to the property at

the time when the lease was made?

4. There shall be interim stay of execution of the decree brought for a challenge to the lease granted in favour of the appellant, subject only to the condition that the appellant pays the costs awarded in the courts below to the plaintiffs within a period of 4 weeks from the date of receipt of copy of this order, failing which, the stay granted shall stand vacated. The appellants shall continue to be liable for payment of lease as stipulated to the 2nd plaintiff as per the terms of the lease without fail. Any violation of the condition as stipulated under the lease would also entail vacating the order of stay.

5. The appeal in RSA No.1611 of 2015 is dismissed and RSA No.640 of 2015 is admitted.

(K.KANNAN)
JUDGE

01.12.2015
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