

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

1. RSA No.766 of 2015 (O&M)
Date of decision : 07.09.2015

Nathi Deceased through his LRs Mohan Singh and ors. ...Appellants

Versus

Ranbir and ors. ...Respondents

2. RSA No.2313 of 2015 (O&M)
Date of decision : 07.09.2015

Parsandi Devi and ors. ...Appellants

Versus

Nathi Deceased through his LRs Mohan Singh and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. J.S. Mehndiratta, Advocate for appellants
(In RSA No.766 of 2015)
for respondents
(In RSA No.2313 of 2015)

Mr. Keshav Partap Singh, Advocate for appellants
(In RSA No.2313 of 2015)
for respondents No.8, 10 & 11 (In RSA No.766 of 2015)

AMIT RAWAL, J. (Oral)

CM No.6045-C of 2015 in RSA No.2313 of 2015

This is an application filed under Section 5 of the Limitation

Act for condonation of delay of 41 days in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 41 days in filing the appeal is condoned.

Application stands disposed of.

Main Case

This order of mine shall dispose of two RSAs bearing No.766 of 2015, titled as Nathi, deceased, through his LRs Mohan Singh and ors. Vs. Ranbir and ors. and RSA No.2313 of 2015 titled as Parsandi Devi and ors. Vs. Nathi deceased, through his LRs Mohan Singh and ors. RSA No.766 of 2015 has been filed at the instance of appellants-plaintiffs against the findings rendered by both the Courts below on issue Nos.1 to 6, whereas other RSA No.2313 of 2015 has been filed at the instance of defendant Nos.8, 10, 11 against the findings rendered on issue No.8, whereby injunction has been granted in favour of respondent-plaintiffs and they shall not be dispossessed except in due course of law.

Mr. J.S. Mehndiratta, learned counsel appearing on behalf of appellants submits that both the Courts below have committed illegality and perversity in rendering findings on issue Nos.1 to 6, against the plaintiff for the reasons that Chunia Devi did not have a title as half share of Keshri devolved upon her, because as per custom, female could not have inherited the share of son. Since, she did not have a title, she could not give away the property by way of registered gift deed dated 17.12.1968 in favour of defendant Nos.1 and 2 sons of Khazan Singh, who are none else, but nephews. It is a matter of record that earlier litigation in the year 1969 was instituted and in those proceedings Chunia appeared and acknowledged the execution of the gift deed, aforementioned, in favour of defendant Nos.1

and 2. The factum of the execution of the gift deed was in the knowledge of the plaintiffs but they did not disclosed the same as late as when present suit has been filed. It is pertinent to mention here the decree in the suit, instituted in 1969, was passed in 1973.

He further submits that there was custom prevailing in the village and half share of Kesari could not be devolved upon Chunia but it should have gone in favour of Misri and the other (brothers) i.e. collateral of Kesari. The aforementioned facts have not been noticed by the Courts below and, therefore, substantial question of law arises for determination.

Mr. Keshav Partap Singh, learned counsel appearing on behalf of defendants, aforementioned, submits that even the findings rendered by the Lower Appellate Court on issue No.8 by modifying the judgment and decree vis-a-vis granting of the injunction in favour of the plaintiff was not in accordance with law, as admittedly the parties to the lis are co-sharers and, therefore, no injunction against the co-sharer can be granted, until and unless the co-sharer proves that he is in exclusive possession and, therefore, Lower Appellate Court has committed illegality and perversity in rendering the finding on issue No.8 against the defendants. He further submits that partition proceedings are already pending before revenue Court.

I have heard learned counsel for parties and appraised the paper book.

The arguments of Mr. Mehndiratta, Advocate thought at the outset looks attractive but on pondering, through the judgment and decree of both the Courts below and as well as record, it is revealed that factum of execution and registration of the gift deed dated 17.12.1968 was in the

knowledge of the plaintiffs. Once the factum of the gift deed executed by Chunia in favour of defendant Nos.1 and 2 was in the knowledge of Nathi, he could have challenged the same by claiming the share of Kesari. Had the plaintiffs pleaded the custom and proved the same, there would have been some force in the arguments, but in the absence of the same, the half share of the property devolved upon Chunia, who is stated to be gifted the share of the property in favour of defendants No.1 and 2 thus could not be challenged. In my view, both the Courts below have rendered finding on Issues No.1 to 6, which is not liable to be distributed as it did not suffer from any illegality or perversity, much less, no substantial question of law arises and as well modification of relief granted by the Lower Appellate Court on Issue No.8, by injunctioning defendants not to dispossess the plaintiffs except in due course of law does not call for interference.

In view of aforesaid reasoning, there is no fault in the said findings, as admittedly the partition proceedings are pending adjudication before the Revenue Court and at the best till the finalization of the partition proceedings, the parties in my view are directed to maintain status-quo.

With the aforementioned observation, RSA bearing No.766 of 2015 is dismissed and RSA No.2313 of 2015 accordingly stands disposed of.

07.09.2015*pawan***(AMIT RAWAL)
JUDGE**