

In the High Court of Punjab and Haryana, Chandigarh

RSA-4130-2014(O&M)
Decided on:23.01.2015

Gurudwara Nirmal DeraAppellant(s)

vs.

Amarjit Kaur and othersRespondent(s)

CORAM HON'BLE MR. JUSTICE AMIT RAWAL

Present Mr.Jagnahar Singh, Advocate
for Mr. S.S.Rangi, Advocate for appellant(s).

AMIT RAWAL, J (ORAL)

CM-9595-C-2014

For the reasons stated in the application, which is supported by an affidavit, delay of 129 days in refiling the appeal is condoned.

CM stands disposed of.

CWP-4130-2015

The appellant – defendant no.2 is in RSA-4130-2014 against the judgment and decree of both the Courts below whereby the suit of the respondent/plaintiff, for declaring the gift deed dated 03.09.1993 executed by defendant no.1 in favour of appellant – defendant no.2 with regard to the suit property has been declared to be illegal, null and void and the appellant-defendant no.2 had been restrained from alienating the suit property, was decreed. Mela Singh, the husband of Punjab Kaur, defendant no.1, filed a civil suit no.97 dated 06.02.1998 against plaintiff Tarlok Singh and his wife Amarjit Kaur and challenged his registered general power of attorney dated 23.04.1965 vide which attorney had

gifted the property. The suit was compromised and as a result of the compromise, a decree dated 30.11.1968 was passed. As per the operative part of decree, it was held as under:,

“The plaintiff will remain owner of the disputed property during his life time and after his death his wife will be the owner but neither of them will have any right to sell, mortgage, gift or will and after the death of Mela Singh plaintiff and his wife, the defendants and their children will succeed to the disputed house.”

From the perusal of the operative part of the decree, it is evident that Punjab Kaur was not given the property in lieu of her right to maintenance as provided under Section 14(1) of the Hindu Succession Act, 1956 (for short 'the Act'). The said right, in essence, was as per the provisions of sub Section 2 of Section 14 of the Act. The trial Court by relying upon the provisions of Section 14(2) of the Act decreed the suit of the respondent/plaintiff and held that Punjab Kaur on the basis of the alleged right, derived from the operative part of the decree, was not competent to gift away or deal with the property owned by Mela Singh. The appellant – defendant no.2, the beneficiary of the gift deed impugned the judgment and decree of the trial Court by filing the appeal. The lower Appellate Court being a last Court of fact and law discharged the obligation by referring to the oral and documentary evidence much less

the law and dismissed the appeal.

Mr. Jagnahar Singh, learned counsel for the appellant – defendant no.2 in support of his submissions contends that both the Courts below have committed an illegality in relying upon the provisions viz Section 14(2) of the Act. He submitted that as per the contents of the decree, Punjab Kaur had become the absolute owner and, therefore, she could deal with the property in any manner she wanted to in view of the provisions of Section 14(1) of the Act. In support of his submissions he has relied upon judgment of Hon'ble Supreme Court rendered in *Vaddeboyina Tulasamma and others v. Vaddeboyina Sesha Reddi (dead) by LRs 1977 AIR (SC) 1944, Gurmel Singh v. Gurnam Singh and others 2012(5)RCR (Civil) 44 and Surjan Singh and others v. State of Haryana and others 2013(3) RCR (Civil)342.*

He has further submitted that after the decree, the property was transferred in the name of Punjab Kaur and her name was reflected in the jamabandi for the year 1989-90.

I am afraid that the above mentioned submissions of the learned counsel for the appellant do not find any substance much less force and sans merit.

As far as the judgment of the Hon'ble Supreme Court rendered in **Tulasamma's case (supra)** is concerned, it has been held that

provisions of sub Section 2 of Section 14 of the Act would only apply to the decree, awards, appeal etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre existing rights. The principle no.4 carved out in the aforementioned judgment also specifies that where the property is allowed or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) of the Act.

In **Gurmel Singh's case (supra)** this Hon'ble Court while referring to the facts and circumstances of the case came to a particular conclusion that the female had acquired right in the property on the basis of compromise which created her life estate and, therefore, she had become the absolute owner.

In **Surjan Singh's case (Supra)** this Hon'ble Court while interfering to the Act held that where the female is allowed piece of land in lieu of her maintenance, then she would acquire absolute right and would, therefore, be termed to be an absolute owner of the property.

The instant case is not a case of kind as referred to in the aforementioned judgments. The operative part of the judgment and decree extracted above did not confer a right upon defendant no.1 –

Punjab Kaur to deal with the manner. It has been specifically stated in the decree that after the demise of Mela Ram and Punjab Kaur, the property would devolve upon the children. The decree did not confer an absolute ownership right in favour of Punjab Kaur. Ex.D8 jamabandi was not proved in accordance with law as it was only tendered in evidence. It is well settled law that mere exhibition of the document does not dispense with its proof. The appellant – defendant no.2 did not prove the aforementioned jamabandi through testimony of revenue official. Both the Courts below after appreciating the oral and documentary evidence rendered a finding of fact and law and decreed the suit in favour of the respondent-plaintiff. No fault can be found in the finding of the both Courts below.

In view of my observation, Punjab Kaur cannot be said to have acquired absolute right in the property of Mela Singh as per the provisions of Section 14(1) of the Act. No substantial question of law arises for adjudication in the present appeal.

Accordingly, appeal is dismissed.

There shall be no order as to costs.

23.01.2015
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(AMIT RAWAL)
JUDGE