

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

RSA No.830 of 2014 (O&M)
Date of Decision.17.09.2015

Prem NathAppellant

Versus

Subhash Chander and othersRespondents

2. RSA No.438 of 2014

Subhash Chander and othersAppellants

Versus

Prem NathRespondent

Present: Mr. B.R. Gupta, Advocate
for the appellant in RSA No.830 of 2014
and for the respondents in RSA No.438 of 2014.

Mr. Madan Gupta, Advocate
for the appellants in RSA No.438 of 2014
and for the respondent in RSA No.830 of 2014.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J.(ORAL)

1. Both the appeals are connected and with the consent of both parties, I propose to dispose of the case on merits. The suit had been filed at the instance of Subhash Chander and legal representatives of Satish being the sons of Takht Mal. He had two other sons of whom Prem Nath was the principal contesting defendant and who is the appellant in RSA No.830 of 2014. Yet another son Chaman Lal had also died and his legal representatives are also the defendants in suit. Maya Wanti, their mother was yet another defendant. Maya Wanti died during the pendency of the suit in the year 2003.

2. The suit was with reference to the estate of father Takht Mal in which the plaintiffs claimed an equal share as that of Prem Nath and Chaman Lal as legal representatives. The suit came to be instituted at a time when the defendant-Prem Nath was setting up a right to the property by virtue of an alleged compromise decree passed in the year 1996 under the terms of which Maya Wanti purported to admit a transfer of her right in the property to her son Prem Nath. The plaintiffs were seeking for declaration that the decree obtained was fraudulent, illegal and null and void and for claim to a joint ownership of the property with the defendant unbound by the terms of the decree. The mother came to Court to file a written statement denying that she had submitted herself to a decree transferring a right in the property and that it had been done without her knowledge. It was also her contention that the property belonged to her husband and she was interested that the property must devolve on all the sons and their representatives equally. Her statement was also recorded in the Court. Prem Nath took the defence that Maya Wanti was actually the owner of the whole property although the property had been purchased in the name of her husband and since she had transferred the right by virtue of compromise, the whole of the property had devolved only in his favour and none of the other defendants or the plaintiffs have any right in the property. The defendant also set up the Will said to have been executed by Maya Wanti during her life time. The Will, however, was not proved and the trial Court decreed the suit.

3. In the appeal filed by Prem Nath, the Appellate Court has modified the decree and has held that Maya Wanti was entitled to 1/5th

share as heir to her husband along with the sons and of their legal representatives in equal shares and her own 1/5th share stood validly transferred by virtue of compromise in favour of Prem Nath. The appeals have been filed by the plaintiffs in RSA No.438 of 2014 and by the defendant Prem Nath in RSA No.830 of 2014.

4. The substantial question of law that was canvassed which I have framed below, is:-

“Whether in any event if the decree had not been brought about by fraud, can it effectively transfer a right in the property by mere admission without registration of the decree or carrying out a transfer in accordance with law ?”

5. The counsel appearing on behalf of defendant-appellant Prem nath is prepared to confine his argument only to the validity of the decree and the right which he has obtained from his mother by virtue of said decree. If we must examine the case only from the point of view of whether Maya Wanti was entitled to transfer her interest in the property by a decree, I must hold that a person who was entitled to share in the property cannot transfer right to the property by an admission. It is settled law that transfer of interest in immovable property cannot pass by admission (see Ambika Prasad and others etc. Vs. Ram Ekbal Rai (dead) by his Lrs and others AIR 1966 SC 606). Even apart from that, Section 17 of the Registration Act details the kinds of instruments for which registration is compulsory. Under Section 17(2)(vi), the exception is available in a double negative form in these words:-

“(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising

immovable property other than that which is the subject-matter of the suit or proceeding”

This provision came for interpretation before the Supreme Court in K. Raghunandan Vs. Ali Hussain Sabir (2008) 13 SCC 102 that if a property were to transfer from one party to another in respect of which a person who had obtained the right did not have a pre-existing right in the property nor was the suit and adjudication raised an issue of alleged pre-existing right, then a person who gives up claim and admits yet another person to be the owner must do it in terms of law by a transfer through an instrument duly registered in the manner required under Section 17 of the Registration Act. The Court decree cannot secure a transfer which is opposed to provisions of law. The decree passed with reference to Maya Wanti's share for the defendant was, therefore, incompetent for non-registration and if Maya Wanti had also died, her own 1/5th share would fall to be divided amongst all the sons and legal representatives equally per stirpes. The decree of the lower Appellate Court granting 2/5th share is set aside and the 1st defendant is entitled to 1/4th share and plaintiffs and the defendants who are other sons or the representatives through their sons will each entitled to 1/4th share per stirpes.

6. The decree of the Court below is modified and both the appeals are disposed of as above. The regular second appeal in RSA No.438 of 2014 is allowed and RSA No.830 of 2014 is dismissed and the question of law raised is answered as above.

(K. KANNAN)
JUDGE

September 17, 2015
Pankaj*