IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.3683 of 1987 (O&M)
Date of Decision: May 25th, 2016

Durga Parshad Kedia

...Appellant

Versus

Prabha Shankar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.C.B.Kaushik, Advocate, for the appellant.

Mr.Rajinder Goyal, Advocate, for respondent No.1.

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AMIT RAWAL, J. (Oral)

CM No.6930-C of 2016

Reply to the application for permission to lead additional evidence is taken on record.

CM stands disposed of.

RSA No.3683 of 1987 (O&M)

The present Regular Second Appeal is directed against the concurrent findings of facts and law, whereby the suit of the plaintiffs seeking declaration and injunction has been declined with a rider that the property sold by defendant Nos.1 to 5 in favour of defendant Nos.6 and 7 shall be subject to the partition.

Mr.C.B.Kaushik, learned counsel appearing on behalf of the appellant-plaintiff submits that the case set out in the plaint was that Gharsi Ram had four sons, namely, Bansi Dhar, Rameshwar Dass, Radha Krishan and Madan Lal. Madan Lal died in the year 1955. The plaintiffs are sons of Radha Krishan Kedia and Bansi Dhar Kedia. Defendant Nos.1 to 5 are the sons of Madan Lal. In respect of the property, the parties to the lis submitted to the jurisdiction of the Arbitrator and Shri Radha Krishan Almal was appointed an Arbitrator. The award dated 3.10.1959 (Ex.P4) came to be passed. By virtue of the same, the property was partitioned amongst the siblings, i.e., sons of Gharsi Ram. Defendant Nos.1 to 5 did not adhere to the dictum of the award and sold the property in favour of defendant Nos.6 and 7, which was the share of the plaintiffs. The trial Court dismissed the suit on the premise that the award of the Arbitrator tantamounts to conferring right and title in favour of the parties as the status of the co-owners was accorded to respondent Nos.6 and 7. He further submits that vide Misc.Application No.3261-C of 2014 leave of this Court is being sought by invoking the provisions of Order 41 Rule 27 CPC to place on record the judgment and decree dated 2.9.1992 passed by the Lower Appellate Court in Civil Appeal No.80 of 1989, titled as Parbha Shankar, Jai Shankar, Vijay Shankar sons of Madan Lal Versus Om Parkash Kediya son of Bansi Dhar Kediya, Durga Parshad son of Radhan Kishan Kediya filed against the judgment and decree dated 15.11.1989 passed in Civil Suit, filed by defendant Nos.1. 3 and 5 (as plaintiffs) on the premise that Madan Lal was not exclusive owner of the property and parties on their own volition sought the resolution of the dispute through the intervention of the Arbitrator and partitioned the property amongst the aforementioned siblings. He further submits that once respondent-defendant Nos.1 to 5 admitted the arbitration, cannot volte-face to support the findings rendered by the Courts below. Reply to the application has been filed on behalf of respondent No.1 stating therein that a subsequent suit was also filed by the appellant and respondent No.9 challenged the sale deed effected by defendant Nos.1 and 5 herein and ultimately the said suit was withdrawn and, thus, urges this Court that the aforementioned judgment and decree is essential and necessary for the adjudication of lis between the parties, which should be taken on record by way of additional evidence.

Mr.Rajinder Goyal, learned counsel appearing on behalf of respondent No.1 submits that it is too late in a day to accept the application as much water has flown as the appellant-plaintiff has not adhered to the award and had sold the property more than his share, though the details of the same are not available and, therefore, the person who does not come to the Court with clean hands cannot be granted indulgence. In other words, once the plaintiffs are claiming equity, they must do equity and prays for dismissal of the application.

After hearing the learned counsel for the parties, I am of the view that the aforementioned judgment and decree dated 2.9.1992 is essential and necessary for adjudication of the appeal. It is settled law that when a subsequent event has arisen between the same parties and has a direct bearing on the adjudication of the pending appeal or suit, the same can always be taken on record by exercising the power under Order 41 Rule 27 CPC. Thus, Misc.Application No.3261-C of 2014 is allowed. The judgment and decree dated 2.9.1992 is taken on record as Annexure A-1.

Mr.Rajinder Goyal, on merits, submits that there was no occasion for seeking resolution of dispute through appointment of Arbitrator as defendant Nos.1 to 5 are the legal heirs of Madan Lal and the other brothers of Madan Lal did not have any stake in his share. It would only devolve upon the legal heirs and, therefore, rightly so the land belonging to Madan Lal has been sold in favour of defendant Nos.6 and 7 vide sale deed, aforementioned. He also submits that the appellant-plaintiff has also sold the land beyond his share and has not adhered to the directions of the Arbitrator and, therefore, cannot seek declaration and injunction, in essence the award was never implemented and, therefore, there was no partition and, thus, urges this Court for affirming the findings rendered by both the Courts below.

Mr.Kaushik, in rebuttal, submits that the appeal would involve the following substantial questions of law to be determined by this Court:-

1) Whether in view of the subsequent event, i.e., passing of the judgment and decree dated 2.9.1992 (Annexure A-1), the suit of the plaintiffs is liable to be decreed?

2) Whether respondent-defendant Nos.1 to 5 can be allowed to approbate and reprobate the claim?

3) Whether the award of the Arbitrator by which the property has been partitioned amongst the sons of Gharsi Ram requires registration owing to the pre-existing right between the siblings?

I have heard the learned counsel for the parties and appraised the paper book and of the view that by the findings rendered by the Appellate Court in Civil Appeal No.80 of 1989 (supra), the award of the Arbitrator dated 3.10.1959 (Ex.P4) has been upheld, in essence it has been held that the parties shall be governed by the award and, therefore, they acquired the right as per the share determined in the award. It is a matter of record that the aforementioned findings have attained finality.

The dispute involved in the present case is only in respect of the parcel of the land as referred to in the award, i.e., Nohra.

In view of the two different findings rendered by two different Courts in respect of the matter in controversy, I am of the view that the findings rendered in Civil Appeal No.80 of 1989 (Annexure A-1) is a correct view, for, the findings rendered by both the Courts below that the award required registration are not only fallacious but perverse, for, all the sons of Gharsi Ram had a pre-existing right and, therefore, the determination of the share in the property held by them would not require registration.

Despite the partition of the property amongst the parties by virtue of the award, defendant Nos.1 to 5 sold the land to defendant Nos.6 and 7 and it is a matter of record that the said land, as per the award, had fallen to the share of the plaintiffs. For the sake of brevity, the findings recorded by the Lower Appellate Court in the judgment and decree dated 2.9.1992 passed in Civil Appeal No.80 of 1989, which is taken on record today by way of additional evidence, read thus:-

"The said award was announced in the year 1999 and it can

be concluded that the parties have dealt with the properties which was the subject matter of a reference before Radha Krishan Almal. It cannot be expected to be left unattached. Unfortunately Radha Krishan Almar has died and had be seen alive he would have proved the award rendered by him on 3.10.1959 Ex.D-8. This award has, thus, been proved by Om Parkash Kediya. The plaintiffs have challenged this award mainly on the ground that this award has not been made the rule of the court and that they were minors at the time of this award was made and their mother had not properly safeguarded their interests. These objections now at this belated stage are devoid of force. The award is not a waste paper but has some legal effect. It is final and binding on the parties and cannot be stated that it is a waste paper unless it is made a rule of the court. The award is, in fact, final adjudication of a court of the parties own choice and unless impeached on sufficient grounds in appropriate proceedings as award is conclusive upon the merits of the controversy submitted. As between the parties and their privies an award is entitled to that respect which is due to the judgment of the court of law. The award does not create rights in property. But those rights cannot be enforced until the award is made a decree of the court. It is one thing to say that a right is not created, it is entirely different thing to say that the right created cannot be enforced without further steps. In the instant case no new rights have been created. The rights of the parties were determined in the award rendered by Gaja Nand Marlalka in the year 1956 and that *award was made the rule of the court by the Calcutta High Court. Therefore, this award rendered by Radha Krishan Almal was not required to be registered. The reasons being that the award rendered by Radha Krishan was acted upon and the parties tried to impinge upon the rights of the others by distress sales. To recapitulate the nauhra situated in Bhiwani and as retained in the decree sheet dated 23.11.1983 was sold by the appellants to Suraj Bhan and Ramanand. It follows, therefore, that nauhra was the subject matter before Radha Krishan Almal and this nauhra had fallen to the share of Durga Parshad and Om Parkash and the appellants claimed that this nauhra was purchased by their father Madan Lal Kediya as late as September 1933. The then Additional Senior Sub Judge, Bhiwani fell into error as the said property was purchased out of the joint Hindu Family fund and this property was kept joint by Gajanand Harlalka in his award dated 17.8.1956. The award of Radha Krishan Harlalka further testified that Bhim Sain was allotted one kothi situated in bichia Bazar and a house known as Hardwariwala. This house was rented by Bhim Sain to New Bank of India and thereafter sold. This sale has not been challenged by the appellants. Bhim Sain also sold the house known as Hardwarwala and this sale too has not been challenged.*

15. The appellants also sold the entire property allotted to them except the new house mentioned by Radha Krishan Almar in his award. One of the appellants Parbha Shankar Kediya who stepped into the witness box admitted that three *shops situated in Bichla Bazar Bhiwani were sold by Om Parkash Kediya and Durga Parshad and he did not challenge these sales. The sales done by the parties from time to time led to the conclusion that the parties had been alienating the properties allotted to them in the award rendered by Radha Krishan Almal and now it cannot be concluded that the property which was acquired by the Improvement Trust was the joint property of the parties. This property was held by the Tribunal vide judgment dated 23rd December, 1982 fell into the share of Durga Parshad and Om Parkash. It is not disputed that Durga Parkash and Om Parkash filed objection against the inadequacy of the compensation and they had received the compensation originally fixed by the Land Acquisition Collector. There is, thus, no infirmity in the findings of the learned trial court on issues Nos.1 to 3 and these findings are affirmed."*

The subsequent event leaves no manner of doubt that the parties had acted upon the award and had submitted to the jurisdiction of the Arbitrator and, thus, cannot be allowed to wriggle out its applicability. According to Mr.Goyal, subsequent events qua sale of the land have also taken place. In case the appellant-plaintiff has sold the land beyond his share, he shall be liable to reimburse and compensate defendant Nos.1 and 5 of the sale consideration, which would also entail interest @ 9% per annum and similarly, defendant Nos.1 to 5 shall also compensate the plaintiffs in respect of the sale deed effected in favour of defendant Nos.6 and 7 and in case it is found that the sale deed was in respect of the share being accorded to the appellant as per the award, the plaintiffs shall be compensated of the sale consideration and interest @ 9% per annum.

I am of the view that the sale deeds effected by the plaintiffs and the defendants beyond the terms and conditions of the award shall remain intact and the direction is only in terms of money.

Keeping in view the aforementioned facts and circumstances, the impugned judgments and decrees are hereby set-aside and the suit is decreed in the manner and mode as indicated above. The questions of law are answered in favour of the appellant-plaintiff and against the respondent-defendants. Decree-sheet be prepared.

Appeal stands disposed of.

May 25th, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**