

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

RSA No.5018 of 2003
Date of decision : 20.09.2016

Gurmukh Singh and others

...Appellants

Versus

Jaswant Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. B.R. Mahajan, Sr. Advocate with
Mr. Akhilesh Vyas, Advocate for the appellants.

None for the respondents.

AMIT RAWAL, J. (Oral)

The defendants No.1 to 6 legal heirs of Bachint Singh are aggrieved of the judgment and decree rendered by the Courts below, whereby the suit at the instance of plaintiff Nos.1 and 2 i.e. legal heirs of Mohinder Singh and Nos.3 to 7 i.e. legal heirs of Harbhajan Singh instituted for partition of the house in dispute, has been decreed.

Mr. B.R. Mahajan, learned Sr. counsel assisted by Mr. Akhilesh Vyas, learned counsel appearing on behalf of the appellants submits that Sunder Singh had four sons i.e. Bishan Singh, Mohinder Singh, Bachint Singh and Harbhajan Singh. Mohinder Singh pre-deceased in fact died during the lifetime of the father. The house in dispute was allotted by

Rehabilitation Department in favour of Bachint Singh vide Allotment Letter dated 11.05.1948. However on 31.08.1965 conveyance deed in respect of the aforementioned suit property was executed in favour of Sunder Singh. Sunder Singh died in the month of December, 1960. The family partition before the Panchayat was entered into on 10.12.1960 Ex.PW4/1, whereby it was held that house would be owned by Bachint Singh and the remaining co-owners would pay the price. On 03.12.1962, Bishan Singh and Harbhajan Singh, much less, LRs of Mohinder Singh filed a suit and sought partition of the same very house but the trial Court vide judgment and decree dated 10.05.1963 dismissed the suit. The record of the aforementioned suit i.e. Court register was examined as Ex.DW2/1. Thereafter on two dates i.e. on 21.05.1969, Bishan Singh executed his 1/4th share in favour of Bachint Singh and on 24.03.1973 Narinder Kaur widow of Harbhajan Singh executed her 1/4th share in favour of Bachint Singh, in essence, Bachint Singh become owner of the entire property as the LRs of Mohinder Singh were given another house. In fact, the family settlement was implemented in toto. The appellants-defendants were flabbergasted to receive the notice of the suit seeking partition of the property filed on 01.10.1990 on the premise that the property was allotted. Conveyance deed is in the name of grandfather and, he died intestate, therefore partition by metes and bounds before the Courts below, in essence, aforementioned facts are specifically pleaded in the written statement. The trial Court decreed the suit though upholding the sale deed dated 21.05.1969 executed by Bishan Singh in favour of Bachint Singh but did not accept the sale deed of 1973 on account of the fact that Harbhajan Singh had died in the year 1962 and

Narinder Kaur widow could not sell the property without seeking the permission of the Court vis-a-vis the right of the minor children.

Mr. Mahajan, further submits that assuming for the arguments sake, though not admitting the children of Harbhajan Singh born in 1962 but after his death, the sale deed could have been challenged within a period of three years from the date of attainment of majority. At the best, it could have been filed in the year 1980 or 1983 but the suit in 1990 was barred by law of limitation, much less, already partition had been effected and the consequential relief thereof given to the LRs. Filing of the suit is nothing but an Act of greed. Courts below has also not determined the share while passing the preliminary decree which is not as per the settled proposition of law. All these factors escaped to the notice of the Court resulting into gross illegality and perversity.

The stand of respondents-plaintiffs before the Courts below was that Narinder Kaur widow could not execute the sale deed qua share of the minor without permission of the Court. The family partition Ex.PW4/1 required registration and in the absence of the same, it could not be looked into and, therefore, it is in this backdrop of the matter, suit was filed. The sale deed in fact was against the terms of the provision of Section 8 of the Hindu Minority and Guardianship Act.

I have heard learned counsel for the appellant-defendant and appraised the paper book and of the view that there is force in the submission of Mr. Mahajan, as admittedly, the possession of the property is with Bachint Singh and his LRs. While taking the date of death of Harbhajan Singh as 1962, the children would attain majority after 1980, but

has filed suit in 1990. The act of the mother in selling the share without permission of the Court resulting into institution of the suit on 01.10.1990 is thus cannot be said to fallacious or perverse. The Panchayatnama had already recognized the pre-existing right of the parties amongst family members, therefore, it did not require registration.

In my view findings rendered by both the Courts below having been hit by the provision of Section 8 of the Act aforementioned is not correct appreciation of the law. Already Civil suit at the instance of Bishan Singh, Harbhajan Singh came to be dismissed on 10.05.1963. Thus, the second suit for partition is not maintainable. It is matter of record that proceeding of the previous suit, have not been placed on record as record was quite old and only Court register as Ex.DW2/1 and, therefore, defendants could not take the plea of res judicata. The aforementioned facts have totally not been appreciated or noticed in correct perspective by both the Courts below.

No doubt, this Court on earlier occasions had been framing substantial questions of law while deciding the appeal, but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in *Pankajakshi (dead) through LRs and others Vs. Chandrika and others*, AIR 2016 SC 1213, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, whether the provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure. The Constitutional Bench of Hon'ble Supreme Court held that the decision in *Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and*

others, 2001 (4) SCC 262, applicability of Section 97(1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

In my view, the suit was not maintainable as the entire property had already fallen to the share of Bachint Singh and in lieu thereof, the predecessor-in-interest of the plaintiff had already taken the money and even LRs of Mohinder Singh. It was an Act of breach and nothing beyond.

For the foregoing reasons, judgment and decree of the Courts below are set aside.

Suit, is accordingly dismissed.

Resultantly, appeal stands allowed.

20.09.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No