

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 3283 of 2010(O&M)

Date of Decision:2.5.2016

Ram Kumar

---Appellant

vs.

Meena Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Arvind Singh and Mr. Deepak Sharma, Advocates
for the appellant

Mr. Anil Kshetarpal, Senior Advocate
with Mr. Saurav Garg, Advocate
for respondent No. 1

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

Rekha Mittal, J.

The present regular second appeal has been directed against the judgment and decree dated 26.8.2009 passed by the Additional District Judge, Yamuna Nagar at Jagadhari whereby the appeal preferred by respondent No. 1 (defendant No. 1) against the judgment and decree dated 1.2.2007 passed by the learned trial court was allowed and suit filed by the appellant/plaintiff for joint possession of the suit land was ordered to be

dismissed.

Ram Kumar appellant staked his claim to joint possession of land measuring 20 kanals 8 marlas being $\frac{1}{3}$ rd share out of land measuring 61 kanals 4 marlas situated at village Sasauli and opened challenge to sale deed dated 25.6.1997 executed by defendant No. 2 Amar Nath (his father) in favour of Meena Devi, daughter of Jai Parkash (brother of Ram Kumar).

Counsel for the appellant has contended that land measuring 61 kanals 4 marlas was jointly owned by the appellant/plaintiff and defendants No. 2 and 3 namely Amar Nath and Jai Parkash. Defendant No. 2 suffered a decree dated 6.4.1993 qua suit land in favour of Rakesh Kumar, Dharambir and Sonu sons of Jai Parkash in civil suit No. 80 of 1993 and mutation No. 1353 was sanctioned on the basis of said decree. The decree dated 6.4.1993 was challenged in civil suit No. 4 of 1995 and in the said suit, a compromise was arrived at and on the basis thereof decree dated 6.4.1993 was set aside and land in dispute was given to defendant No. 2 as a life estate with a stipulation that defendant No. 2 shall have no right to alienate in any form the said land during his life time and after his death, the plaintiff and defendant No. 3 shall become owner in equal share. It is argued that though in the judgment and decree dated 8.2.1995 Exs. P1 and P2, compromise Ex. P3 has not been made a part and parcel but the factum that a compromise has been effected between the parties has been duly recorded and the suit filed by the appellant was decided on the basis of statements of the parties and not on merits. It is further argued that judgment and decree Exs. P1 and P2 and compromise Ex. P3 have to be read alongwith, therefore, the mere fact that terms and conditions of

compromise Ex. CX are not a part of the decree would not cause any adverse affect on rights of the appellant. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court of India **Jaswant Singh vs. Gurdev Singh and others (2012) 1 Supreme Court Cases 425.**

Counsel has further argued that as in view of compromise Ex. P3, Sh. Amar Nath was only given life estate in the suit land with a condition that after his demise, the property would go to the plaintiff and defendant No. 3 in equal share, Sh. Amar Nath was not competent to alienate the suit property by way of sale deed purported to be executed in favour of Meena Devi daughter of Sh. Jai Parkash.

Counsel for the contesting respondent, on the contrary, has urged that he does not dispute the factum that the suit instituted by Ram Kumar appellant namely civil suit No. 4 of 1995 titled "Ram Kumar vs. Rakesh Kumar and others" was decided in view of compromise Ex. P3. He has further submitted that he has got no objection if the said compromise deed Ex. P3 is taken into consideration or judgment and decree Exs. P1 and P2 are interpreted in the light of contents of Ex. P3. However, it is vehemently argued that though Amar Nath, erstwhile owner of the suit property was arrayed as defendant No. 4 in the suit instituted by Ram Kumar but later he was given up on 28.1.1995 as duly incorporated in the judgment and decree Exs. P1 and P2. It is further argued that Sh. Amar Nath is not a party/privy to the compromise dated 23.1.1995 Ex. P3, therefore, any terms and conditions settled between the parties to the said compromise can either have any adverse affect on the right of Sh. Amar Nath nor Sh. Amar Nath can be bound by those terms and conditions. To substantiate his

contention, it is argued that a compromise is a contract between the parties signatory thereto, therefore, in absence of Sh. Amar Nath being a party to the said compromise, the appellant cannot be heard to say that either Amar Nath was given life estate or he cannot alienate the suit property, admittedly owned by him. Further dilating, it is argued that as soon as the judgment and decree dated 6.4.1993 passed against Sh. Amar Nath is set aside, the suit property would revert to Sh. Amar Nath and created status quo ante as it existed prior to the decree dated 6.4.1993 was passed by the Court at Jagadhari. According to counsel, as Sh. Amar Nath became the exclusive owner of the suit property, he had the absolute right to deal with the suit property in the manner he liked. It is further argued that Sh. Amar Nath executed a valid registered sale deed in favour of Ms. Meena Devi, his grand daughter and did not opt to challenge the said sale on any ground whatever despite knowing fully well in view of the written statement filed by him in the present proceedings, no fault can be found in the judgment passed by the Court in appeal reversing the judgment and decree passed by the trial court and non-suiting claim of the appellant/plaintiff.

I have heard counsel for the parties, perused the paper book and original record of the trial court.

The short question that calls for determination is “*whether Sh. Amar Nath was not competent to alienate the suit land keeping in view the terms and conditions incorporated in the compromise deed Ex. P3?*”

There is no dispute between the parties that Sh. Amar Nath was the absolute owner of suit land measuring 20 kanals 08 marlas. Sh. Amar Nath suffered a consent decree dated 6.4.1993 in respect of suit land in

favour of his grand sons namely Rakesh Kumar, Dharambir and Sonu sons of Sh. Jai Parkesh. The judgment and decree dated 6.4.1993 became subject matter of challenge in civil suit titled “Ram Kumar vs. Rakesh Kumar and others” instituted in January 1994. Sh. Amar Nath was arrayed as defendant No. 4 in the said suit but was later given up on 28.1.1995. Counsel for the appellant has not disputed that Sh. Amar Nath is not a party to the compromise deed Ex. P3 which was entered into between Ram Kumar plaintiff and Rakesh Kumar etc. defendants. In view of compromise effected between Ram Kumar and Rakesh Kumar and others, the judgment and decree dated 6.4.1993 passed against Sh. Amar Nath transferring his ownership in the suit land in favour of Rakesh Kumar and others came to be set aside. The moment the judgment and decree dated 6.4.1993 passed against Sh. Amar Nath was set aside in appropriate proceedings by a competent Court of law, it created a position as it existed prior to passing of the judgment and decree dated 6.4.1993 meaning thereby that ownership of Sh. Amar Nath in the suit land was revived. Sh. Amar Nath is admittedly not a party to the compromise Ex. P3. Counsel for the appellant is not in a position to cite any provision in law or a precedent that Amar Nath would be bound by compromise effected between Ram Kumar on one side and Rakesh Kumar and others on the other, in his absence. The terms and conditions of the compromise Ex. P3 can neither bind Sh. Amar Nath nor can create any restraint upon his right to deal with the suit property being its absolute owner, I find myself unable to accept the submissions of counsel for the appellant that Amar Nath was not competent to alienate the suit property in view of the terms and conditions of compromise Ex. P3. As Sh.

Amar Nath was not bound by any terms and conditions of the compromise, a contract between the parties thereto, he being the absolute owner of the property had every right to deal with the property in the manner he liked. That being so, I find no error much less illegality in the findings recorded by the first appellate court. On the contrary, the error committed by the trial court in accepting claim of the appellant has rightly been rectified by the Court in appeal.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal is dismissed with costs.

(Rekha Mittal)
Judge

2.5.2016
paramjit