

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

RSA No.666 of 2010 (O&M)

Date of Decision.20.09.2016

Shashi and others

.....Appellants

Vs.

Bhupinder Singh and others

.....Respondents

Present: Mr. Amarjit Markan, Advocate with
Mr. Kanwal Goyal, Advocate
for the appellants.

Mr. Sumit Gupta, Advocate
for respondent Nos.6 to 11.

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AMIT RAWAL J. (ORAL)

C.M. No.12486-C of 2016

After arguing at some length, the arguing counsel Mr. Markan seeks withdrawal of the application reserving right to avail the remedy in case any necessity arisen.

The application is dismissed as withdrawn with liberty aforesaid.

RSA No.666 of 2010

Mr. Amarjit Markan assisted by Mr. Kanwal Goyal, learned counsel appearing for the appellants-plaintiffs submits that Niranjn Singh was owner of land measuring 34 kanals 8 marlas. He vide sale deed dated 13.02.1962 sold the land to Babu Ram and Bihari Lal, father and son, in half share each. Babu Ram, during his life time, sold half share to his son Girdhari Lal vide registered sale deed dated 18.10.1963. In the meantime, Dalbir Singh son of Niranjn Singh instituted the suit on 5.2.1968, taking the aid of the Punjab Custom (Power to Contest) Act, 1920, by invoking

set aside vide judgment and decree dated 26.10.1971 by holding that it would not be operative after the death of Niranjana Singh. However, in the year 1973, an amendment was caused in the aforementioned Act by virtue of which, Section 6 on the basis of which the earlier suit was filed at the instance of Dalbir Singh, was deleted, in essence, reversionary right had become extinct.

Girdhari Lal-plaintiff instituted the present suit seeking ownership declaration and consequential relief of permanent injunction by way of amendment sought in misc. application by contending that the decree obtained by Dalbir Singh on 26.10.1971 has become inexecutable in view of the 1973 amendment vide which the decree or action taken before the amendment has not been saved. This fact was noticed by the trial Court while decreeing the suit but the lower Appellate Court reversed the judgment and decree passed by the trial Court while holding that the second suit at the instance of Girdhari Lal was hit by doctrine akin to res judicata. In support of his contention, he relies upon judgment of Hon'ble Supreme Court in **Gokal Vs. Haria and others AIR 1949 East Punjab 414** to contend that in the absence of bringing suit for possession at the instance of Dalbir Singh son of Niranjana Singh, the decree had become inexecutable. In fact, Dalbir Singh had not taken any steps in this regard, thus, urges this Court for setting aside the finding rendered by the lower Appellate Court.

He further submits that the declaratory decree in the absence of consequential relief was nothing but a waste paper, in other words was/is inexecutable. The contesting respondents-defendants No.1 to 5 were served but they have not chosen to contest the present appeal.

Mr. Sumit Gupta, learned counsel appearing for respondent

Nos.6 to 11 who are none else but legal representatives of Babu Ram states that he has no clash of interest with the appellants-plaintiffs.

I have heard learned counsel for the parties, appraised the paper book and as well as the records of the Courts below. The trial Court on the preponderance of the evidence decreed the suit holding the appellants-plaintiffs to be owners of land measuring 15 kanals 4 marals as described in the plaint and further held to be in joint possession along with defendants No.3 to 5. The entries in column No.4 of the jamabandi for the year 1992-93 showing the defendants No.1 and 2 to be owners of the suit land were held to be null and void and defendants had been restrained by way of permanent injunction in any manner alienating share of the plaintiffs. The defendants, as noticed above, assailed the aforementioned judgment and decree but the lower Appellate Court has committed illegality and perversity in holding that the suit at the instance of the appellants-plaintiffs was hit by doctrine akin to res judicata, in essence, once the matter had already been adjudicated, cannot be re-agitated.

I am afraid that the aforementioned findings are neither here nor there, for, the lower Appellate Court remained oblivious of the provisions of Section 8 of the Punjab Limitation (Custom) Act, 1920 wherein it has been held that when any person obtains a decree regarding alienation of ancestral property, the decree shall enure for the benefit of all persons entitled to impeach the alienation or the appointment of a heir but as per the Schedule attached thereto, the period of limitation, if such declaratory decree is to be obtained, is three years. For the sake brevity, Sr. No.2 of the Schedule reads thus:-

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
2. A suit for possession of ancestral immovable property which has been alienated on the ground that the alienation is not binding on the plaintiff according to custom (a) xxx xxx xxx (b) if such declaratory decree is obtained	3 years	The date on which the right to sue accrues or the date on which the declaratory decree is obtained, whichever is earlier.

It is conceded position on record that Dalbir Singh had not instituted the suit as per the aforementioned provisions. There is another aspect of the matter. The Punjab Government came out with the Ordinance in the year 1972 by virtue of which amendment was caused in Section 6 of the Punjab Limitation (Custom) Act, 1920 whereby in order to seek the declaration or challenging the alienation, the provisions of the Limitation Act, 1908 was taken away i.e. the right which had been availed by Dalbir Singh resulting into decree of the year 1971, in essence, the right had been taken away to challenge the sale deed executed by the father, in essence, the decree dated 26.10.1971.

It is a matter of record that saving clause of 1920 Act provided that the decree obtained prior to the year 1920 will continue to remain in force but in the instant case, decree is not prior thereto i.e. of the year 1971. This aspect has totally been brushed aside by the lower Appellate Court resulting into illegality and perversity.

No doubt, this Court on earlier occasions had been framing the 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

others AIR 2016 SC 1213 wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, whether 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 view of the foregoing reasons, the judgment and decree passed by the lower Appellate Court is set aside. Resultantly, the judgment and decree passed by the trial Court is restored and the second appeal is allowed.

(AMIT RAWAL)
JUDGE

September 20, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No