

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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C.M. Nos. 4038-39-C of 2012 &
RSA No. 1503 of 2012

Date of Decision: 10.03.2016

Gurminder Kaur and others

.....APPELLANTS

VERSUS

Samarjit Kaur and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. Ish Puneet Singh, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J (ORAL)

C.M. No. 4038-C of 2012

Prayer in this application is for exemption from filing certified copies of the judgments dated 14.03.1985 and 13.05.1987 and to place on record the true and correct copies of the same.

C.M. is allowed subject to just exceptions. Filing of certified copies of the judgments dated 14.03.1985 and 13.05.1987 is dispensed with and true and correct copies of the same are taken on record.

RSA No. 1503 of 2012

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Ferozepur dated 17.01.2009, whereby the suit for declaration to the effect that the appellants-plaintiffs are owners of the land measuring 15 Kanals 17 Marlas as 1/9th share of the ½ share of the total land measuring 304 Kanals left by Gurdip Kaur on the basis of

inheritance comprised of Khewat No. 288 Khatauni No. 490 to 492, as detailed in the head note of the plaint, with consequential relief of possession and for permanent injunction restraining the respondents-defendants from alienating the suit land in any manner by way of sale, mortgage, gift deed etc. more than the share of the land of plaintiff No. 2, stands dismissed, appeal against which preferred by the appellants-plaintiffs has also been dismissed by the Additional District Judge, Ferozepur on 07.10.2011.

2. It is the contention of the learned counsel for the appellants that the finding recorded by the Courts below that the earlier judgment and decree dated 14.03.1985 Ex. P-12 and Ex. P-13 would be binding upon the parties and as per the said decree, Gurdip Kaur, mother-in-law of Gurminder Kaur wd/o Daljit Singh-appellant-plaintiff No. 1 was left with no property and, therefore, Gurminder Kaur-appellant-plaintiff No. 1, Jaswant Kaur and Rajbir Kaur-plaintiffs No. 3 and 4 and Gurbachan Kaur through Manjinder Singh-plaintiff No. 5 her son, daughters of Gurdip Kaur, were not declared owners of the property, cannot sustain on the ground that in the judgment, it has been specifically stated that Gurdip Kaur is entitled to 1/9th share out of the property of Daljit Singh her son. He contends that although in the decree, there is no specific mention of her share but it has also not been said that she is not entitled to the 1/9th share, which has been referred to in the earlier part of the judgment. He, thus, contends that the judgments and decree, as passed by the Courts below, cannot sustain and deserve to be set aside. His further contention is that even if the right of Gurdip Kaur is said to have been relinquished by her in the light of the compromise decree, the said decree was required to be registered, which has not been done and,

therefore, would not be binding upon the appellants-plaintiffs and has no legal force nor can it be read into evidence. He, however, conceded that during the life time of Gurdip Kaur, the said judgment and decree dated 14.03.1985 Ex. P-12 and Ex. P-13 have neither been challenged by her nor had she asserted her rights qua 1/9th share of the property of Daljit Singh.

3. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned judgments as also the judgment and decree dated 14.03.1985 Ex. P-12 and Ex. P-13.

4. A perusal of the judgment and decree dated 14.03.1985 would show that although in the judgment, there is a mention that Gurdip Kaur is claiming her right qua her share to the extent of 1/9th share in the property of Daljit Singh, her deceased son and inheritance of the retiral benefits and the property in his share was in question but in the ultimate decree, which has been passed, there is no such mention. The decree reads as follows:-

“i) Rachhpal Kaur plaintiff No. 1 is declared to be the legally wedded widow of Daljit Singh deceased while plaintiffs No. 2 to 6 are their children.

ii) Gurminder Kaur defendant No. 1 is declared to be the legally wedded widow of said Daljit Singh while defendants No. 2 and 3 are their children.

iii) Gurminder Kaur defendant No. 1 and her co-defendants No. 2 and 3 are equally entitled to the pecuniary service benefits available to the legal heirs of deceased Daljit Singh Sub Inspector police including a benefit of service to a member of his family.

iv) The said defendants No. 1 to 3 are equally entitled to 15 Kanals 19 Marlas of land comprised in killa No. 134//9, 10 and 8 as per the details contained in para No. 8 of the judgment. They would be absolute owners of this property to the exclusion of the right of any other co-sharer in the joint khata subject only to a rider that if this land is sold at any future date the plaintiffs would have a preferential right of purchase at the prevalent market price to be assessed by S/Sh.Sethi and Behal Advocates. The title of this property would vest in the said defendants from today but the vacant possession thereof would deemed to have been handed over to them by 15.5.1985.

v) The plaintiffs and defendants No. 1 to 3 would be equally entitled to any moveable assets of said deceased Daljit Singh which is not the subject matter of the present suit.

vi) The plaintiffs are equally entitled to the estate of Daljit Singh deceased being $\frac{1}{2}$ share of a joint Khata of 304 kanals of land as described in the heading of the plaint and situated in village Khai Phemeke to the exclusion of said 15 kanals 19 marlas of land given to defendants No. 1 to 3.

vii) Due to the peculiar circumstances of case, the parties are however, left to bear their own costs.”

5. A perusal of the above would show that there is no mention with regard to the share of Gurdip Kaur, as has been sought to be asserted by the counsel for the appellants, on the basis of which, the present suit for declaration has been filed. The assertion, thus, of the counsel for the appellants that Gurdip Kaur had a right of $\frac{1}{9}$ th share in the property of

Daljit Singh cannot be accepted.

6. It is not in dispute that during her life-time, Gurdip Kaur has neither challenged the judgment and decree dated 14.03.1985 (Ex. P-12 and Ex. P-13) nor have the subsequent mutations, as sanctioned on the basis of the aforesaid judgment and decree, been challenged by Gurdip Kaur during her life-time. It is apparent that she had accepted the decree in toto as passed by the Courts and had never agitated her right qua 1/9th share in the suit property of Daljit Singh, her deceased son. It should not be lost sight of that the suit was compromised and decree passed accordingly which has been accepted by all the parties.

7. As regards the contention of the learned counsel for the appellants that the decree does not refer to the 1/9th share of Gurdip Kaur and, therefore, in the light of the observations in the judgment, her right to 1/9th share still exists, this plea cannot be accepted as it is the decree that is executable and in the said decree, there is no mention thereof. Had Gurdip Kaur been aggrieved of her being deprived of her claim, she could have agitated the same during her life-time, which has not been done by her.

8. As regards the contention of the counsel for the appellants that Gurdip Kaur would be treated to have relinquished her right in the light of the decree and, therefore, the said decree was required to be registered and it, thus, cannot be taken into consideration for the purpose of evidence but the said plea again cannot be accepted in the light of the fact that there is nothing mentioned with regard to the relinquishment of her right in the decree.

9. It may be added here that Gurminder Kaur-appellant-plaintiff No. 1 and proforma respondents No. 6 to 10, the legal heirs of Manjit Singh

were parties to the earlier suit and, therefore, they cannot take such a plea having taken the benefit of earlier decree passed by the Court. The suit appears to be an outcome of greed and lust for the property, on which a decision has already been given by the Court, which has been accepted by the parties to the suit and in any case, in the light of the decree where Gurdip Kaur was a party to the suit, the decree would be binding upon the estate of Gurdip Kaur as she has not challenged the same during her life time. The judgments and decree, therefore, passed by the Courts below are in accordance with law which do not call for interference by this Court in the present appeal.

10. No other point has been raised or argued by the counsel for the appellant-plaintiff.

11. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

12. There is no substantial question of law in the present appeal, which requires consideration of this Court.

13. In view of the above, finding no merit in the appeal, the same stands dismissed.

C.M. No. 4039-C of 2012

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

March 10, 2016

**(AUGUSTINE GEORGE MASIH)
JUDGE**