

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

RSA No.4310 of 2011

Date of Decision.09.09.2016

Gurdeep Singh

.....Appellant

Vs.

Sukhwant Kaur and others

.....Respondents

Present: Mr. R.K. Girdhar, Advocate
for the appellant.

Mr. R.K. Shukla, Advocate
for the respondents.

-.-

AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit at the instance of the legal representatives of Pirthi Singh s/o Wazir Singh challenging the sale deed dated 24.05.2002 executed by Resham Kaur wife of Wazir Singh, has been decreed.

Mr. R.K. Girdhar, learned counsel for the appellant-defendant submits that Wazir Singh was owner of the property in dispute. He had three sons namely Balwinder Singh, Pirthi Singh and Gurdeep Singh and wife Resham Kaur. During his life time, he executed a registered Will dated 24.11.1982 by reciting that during the life time of his wife, she would be owner and after her demise, three sons would acquire the ownership. Wazir Singh died in the year 2001 and Resham Kaur as per the provisions of Section 14(1) of the Hindu Succession Act, 1956 (hereinafter called as 1956, Act) sold the property belonged to Wazir Singh to defendant No.1 vide sale deed dated 24.05.2002. In support of his contention, he relies upon the ratio decidendi culled out in the judgment rendered by Hon'ble

has been reiterated in the latest judgment of Supreme Court in *Jupudy Pardha Sarathy Vs. Pentapati Rama Krishna and others*(2016) 2 SCC 56 that even if there is recital, it would not be termed as limited right as per Section 14(1) of the 1956 Act. She would be absolute owner. The lower Appellate Court has misinterpreted the contents of the Will as well as the settled law, thus, urges this Court for setting aside the judgment and decree passed by the lower Appellate Court by formulating the substantial questions of law. In my view, the following substantial questions of law arise for determination in the second appeal:-

- (i) Whether the sale deed dated 24.05.2002 executed by Resham Kaur wife of Wazir Singh was an outcome of absolute ownership as per provisions of Section 14(1) of the 1956 Act?
- (ii) Whether the suit at the instance of respondents-plaintiffs by taking the benefit of recital in the Will granting the limited right to estate/ownership to Resham Kaur would convert into absolute ownership?

Per contra, Mr. R.K. Shukla, learned counsel appearing for the respondents-plaintiffs submits that once the recital in the Will gave limited right to Resham Kaur, it could not ripe into absolute ownership and therefore, she could not have alienated the property. In fact the intention of the testator was to bequeath the property in favour of three surviving sons and the respondents-plaintiffs are none else but the legal representatives of Pirthi Singh, in essence, rightly so, the provisions of Section 14(1) of the 1956 Act have been interpreted, much less, no substantial question of law arises for consideration.

I have heard learned counsel for the parties, appraised the

paper book and of the view that as per the ratio decidendi culled out in V. Tulsamma and Jupudy Pardha Sarathy's case (supra), it has been held that recital in the Will giving ownership rights to the wife during her life time would ripen into ownership and she would be an absolute owner as per Section 14(1) of the 1956 Act. For the sake of brevity, relevant paragraph of the judgment in Jupudy Pardha Sarathy referred to above reads thus:-

“19 (4) Sub-section (2) of Section 14 applies to instruments, decrees, awards gifts etc., which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognize pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing rights, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.”

For the reasons aforementioned, I am of the view that both the

Courts below have misread and misinterpreted the recital in the Will and erroneously set aside the sale deed dated 24.05.2002. The substantial questions of law are answered in favour of the appellant-defendant and against the respondents-plaintiffs. The judgments and decrees passed by the Courts below qua setting aside the sale deed dated 24.05.2002 are set aside. The second appeal is allowed. Decree sheet shall be prepared accordingly.

(AMIT RAWAL)
JUDGE

September 09, 2016

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No