

210

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-848-2011 AND
Cross Objection No.12-C-2011 (O&M)
Date of decision : 28.04.2016

Mohinder Samra (Deceased through LRs)

... Appellant

Versus

Teja Singh (deceased through LRs) and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Parambir Singh, Advocate and
Ms. Sakshi, Advocate
for the appellant.

Mr. Vishal 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 reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

This order shall dispose of appeal bearing **RSA No.848 of 2011**
titled as **“Mohinder Samra (deceased through Lrs) V/s Teja Singh (deceased through LRs) and others”** and **XOBS No.12-C of 2011**.

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit seeking 1/6th share on account of partition of the property bearing No.641/L, Model Town, Ludhiana, has been dismissed.

Mr. Puneet Jindal, learned Senior Counsel assisted by Mr. Parmbir Singh, Advocate and Ms. Sakshi, learned counsel appearing on behalf of the

appellant-plaintiff submits that as per the conveyance deed dated 05.12.1951 (Ex.P-3), the aforementioned property was allotted in favour of Harnam Kaur wife of Sardar Bahadur Kishan Singh. The aforementioned husband and wife had four sons and three daughters. Two sons and one daughter died. The suit was instituted on behalf of other daughter claiming partition of the property as Harnam Kaur died intestate and objection qua maintainability of the suit in view of the provisions of un-amended provisions of Section 23 of the Hindu Succession Act, 1956 (hereinafter called 'the 1956 Act') was taken. This Court by relying upon the judgment of Hon'ble Supreme Court in **“G.Sekar V/s Geetha and others” (2009) 6 SCC 99**, held that the suit was maintainable. On the basis of the aforementioned evidence, the trial Court decreed the suit, but the lower Appellate Court having gone in the arena of surmises and conjectures, much less, misread and misdirected, in reading the evidence of DW-1 and other evidences, formed an opinion that the appellant-plaintiff failed to prove on record as to whether the property, in question, was owned by Harnam Kaur. He has drawn the attention of this Court to the Conveyance Deed dated 05.12.1951 (Ex.P3) as annexed with the paper book as Annexure A-1 to contend that it bears the thumb-impressions of Harnam Kaur, but at one page at the left hand side, some official of the concerned Department has written as Harbans Kaur. The respondent No.1 Harbans Kaur is widow of one of the sons of Harnam Kaur and Sardar Bahadur Krishan Singh. Taking the advantage of the similarity in the name, came out to the plea that the property was allotted in her name. DW-1 Gursharan Singh, Clerk from the office of Municipal Corporation, in cross-examination stated that there is no document of title in favour of Harbans Kaur, whereas it is correct that as per the record,

the property stood in the name of the Harnam Kaur. He further submits that the suit has been decreed in the year 2007 and the provisions of Section 23 of the 1956 Act was repealed vide amendment caused in the year 2005 and urges this Court to formulate the following substantial questions of law:-

1. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity.
2. Whether the cross-objections at the instance of the contesting defendants qua maintainability of the suit, in view of the ratio culled in the judgment rendered by the Hon'ble Supreme Court in "G.Sekar's case (supra), would be maintainable or not?

Mr. Vishal Garg, learned counsel appearing on behalf of the contesting respondent(s)-defendant(s) submits that the suit was not maintainable in view of the law laid down by the Hon'ble Supreme Court in "Sheela Devi and others V/s Lal Chand and another" (2006) 8 SCC 581, wherein it has been held that the amendment caused in Section 6 and 8 of the 1956 Act is prospective in nature. It has been held that the married daughter would have a right in the estate of the father only after March 2005 and not before that, whereas in the present case, the suit was instituted on 02.04.1993. He further submits that the pith and substance/tenor of the testimony of DW-1, if seen, reveals that as per the record of MC, Harnam Kaur has been shown to be owner of the property in the Register i.e. T.S-1.

He further submits that the suit was also bad for non-joinder and mis-joinder of the parties, for the reason that Gurdail Singh Thind, brother of the appellant-plaintiff had died and widow had been impleaded as LR, but not the other LRs, thus, there is no illegality and perversity in the judgment and decree rendered by the lower Appellate Court and urges this Court for

affirming the findings, under challenge, rendered by the lower Appellate Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and substance in the plea of Mr. Puneet Jindal, for, as per the ratio decidendi culled in the judgment rendered by the Hon'ble Supreme Court in "G.Sekar's" case (supra), it has been held that though the amendment caused in Section 23 of the 1956 Act, is in the year 2005 and has been held to be prospective, but the suit, in case, instituted prior thereto, and decreed subsequently, widow daughter would have a right. It is matter of record that the appellant-plaintiff is a widow. No doubt, rights of the parties are crystallized that at the time when the suit is filed, but the Court can always take into consideration subsequent events or amendment at an appellate stage. After the amendment caused in the aforementioned Act, the appellant-plaintiff has a right to claim the partition. The situation before the amendment was that even, though, the married daughter or widow daughter would have a share in the property, but she cannot seek the partition until and unless, other siblings, namely, brothers seek the partition. Be that as it may, the fact remains that this proposition of law, has already been settled in view of the ratio decidendi culled out in the judgment rendered by the Hon'ble Supreme Court in "G.Sekar's" case (supra) and need not delve on such proposition.

Accordingly, the cross-objections qua maintainability are not sustainable and hereby rejected.

As regards the objection of Mr. Vishal Garg with regard to the applicability of the act and prospective in nature, I am in agreement with his submissions and this fact has already been noticed in paragraph 30 & 31 in "G.Sekar's" case (supra), but after noticing all facts, Hon'ble Supreme Court has

held that the suit would be maintainable, thus, ratio decidendi culled out in “Sheela Devi’s case (supra) would apply only to the amendment caused in Section 6 and 8 of the 1956 Act and not with regard to Section 23 of the 1956 Act as suit has been decreed on 25.05.2007.

The plea of Mr. Vishal Garg qua maintainability of the suit on account of non-joinder of the parties is not tenable as it is a settled law that estate of the deceased can be represented by one of the LRs, the aforementioned view of mine supported by the judgment rendered in Sardara Singh and another v/s Harbhajan Singh and others, AIR 1974 (Punjab) 345. All these aspects have not been noticed by the lower Appellate Court while reversing the findings, I am of the view that the lower Appellate Court had embarked upon a path which is not the genesis of the suit, much less, defence taken in the written statement, for, the respondents-defendants have also relied upon the Conveyance Deed (Ex.P-3) by producing on record as DW-4/B.

The cumulative reading of my aforementioned findings reached to the irresistible conclusion that the judgment and decree of the lower Appellate Court is not sustainable and accordingly, is hereby set aside and that of trial Court is restored. Substantial questions of law as noticed above are answered in favour of the appellant-plaintiff and against the contesting respondent(s)-defendant(s).

Resultantly, the appeal stands allowed and the cross-objections are dismissed.

28.04.2016
yogesh

(AMIT RAWAL)
JUDGE