

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No. 3250 of 2012 (O&M)
Date of Decision: January 14, 2016**

Surinder Kaur and others

.....**APPELLANT(s).**

VERSUS

Rattan Kaur and others

.....**RESPONDENT(s).**

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.C. Sharma, Advocate
for the appellant (s).

Mr. Tribhuwan Singla, Advocate
for respondents No.1 to 3.

SURINDER GUPTA, J.

1. The plaintiffs (now appellants) being legal heirs of Bawa Singh filed suit for “possession of suit land on the basis of decree dated 26th June, 1956 passed in Civil Suit No.81 of 1955 by the then Sub Judge Ist Class, Nakodar, whereby the suit filed by Bawa Singh was decreed for declaration that the alienation of land in dispute measuring 13 Kanals, 14 Marlas being ¼ share of land measuring 54 Kanals, 17 Marlas comprised in Khasra No. No.265/405-406-407-408, 267/410, 268/411, 390/577, 391/578, Khasra No.78//29(1-11), 78//14/2(3-16), 16//3(4-4), 24/2(5-18), 25/1 min(2-11), 85//5/1(6-8), 89//5/4(3-7), 6/1(0-13), 78//25/1 min (3-8), 85//4(7-11), 78//18/2(1-3), 23/1(1-15), 78//23/2(0-12), 78//17(8-0), 18/3(3-1), 24/1(0-13), 78//23/3(0-6) situated in the area of Village Dhaliwal, Tehsil Nakodar as detailed in the revenue estate of Village Dhaliwal, Tehsil Nakodar, District

Jalandhar for the year 1993-94 with all rights of ingress and egress (*sic*) thereto and right in chah, rah, mehal, sehan, allat chah, standing trees, share in tube-well (*sic*) and all other incidental rights thereto”.

2. Claiming their revisionary rights as allowed vide decree dated 26.6.1956 passed in civil suit No.81 of 1955 by Sub Judge Ist Class, Nakodar, whereby the sale deed dated 13.1.1954 executed by Nazar Singh son of Ishar Singh in favour of Bir Singh and Sohan Singh sons of Partap Singh was held to be not binding on the rights of revisioners, the plaintiffs claimed possession of land measuring 13 kanal 14 marla being 1/4th share of land measuring 54 kanal 17 marla situated in village Dhaliwal, Tehsil Nakodar, District Jalandhar. It was pleaded that defendants, who are the legal heirs of Sohan Singh were offered ₹516/- which the plaintiffs were required to pay in terms of decree and were requested to deliver possession of suit land which they refused, hence this suit.

3. The defendants contested the claim of plaintiffs, *inter alia*, pleading that the plaintiff are not the heirs of Nazar Singh. After death of Sohan Singh, defendants have become owners in possession of suit land and the plaintiffs have no concern with it.

4. The learned Civil Judge (Junior Division), Nakodar, decreed the suit.

5. The first Appellate Court allowed the appeal relying on the observations of Division Bench of this Court in case ***Kamakar Singh and others vs. Didar Singh and others, 2011(2) RCR (Civil) 550.***

6. Learned counsel for appellants has argued that amendment of

was not retrospective in nature, as such, the judgment and decree passed in favour of appellants in the year 1956 is not effected by the aforesaid amendment. The first appellate court has wrongly held the decree in favour of appellants as not executable. Learned counsel for appellants has argued that vide decree dated 26.6.1956, the sale deed dated 31.1.1954 executed by Nazar Singh, was set aside. Nazar Singh died on 7.7.1996. The cause of action to execute the decree had accrued to the plaintiffs after the death of Nazar Singh. By that time, the Punjab Custom (Power to Contest) Act had been amended and the decree passed in the year 1956 no longer remained binding. The first appellate court has rightly relied upon the observations in case ***Kamakar Singh and others vs. Didar Singh and others*** (*supra*).

7. On giving careful thought to the submissions of learned counsel for the parties, I am of the considered opinion that the law has been well settled in case ***Kamakar Singh and others vs. Didar Singh and others*** (*supra*) regarding application of amendment in Punjab Custom (Power to Contest) Act, 1920.

8. The Apex Court in the case of ***Darshan Singh vs. Ram Pal Singh, AIR 1991 (SC) 1654***, while discussing the impact of Amendment to the Punjab Custom (Power to Contest) Act, 1920 carried out in 1973, observed in para 37 of the judgment as follows:-

“We are inclined to take the view that in the instant case Legislature looked back to 23rd January, 1973 and not beyond to put an end to the custom and merely because on that cut off date some contests were brought to abrupt end would not make the Amendment Act retrospective. In other words, it would not be retrospective merely because a part

of the requisites for its action was drawn from a time antecedent to the Amendment Act coming into force. We are also of the view that while providing that “no person shall contest any alienation of immovable property whether ancestral or non-ancestral or any appointment of an heir to such property” without preserving any right to contest such alienations of appointments as were made after the coming into force of the Principal Act and before the coming into force of the Amendment Act, the intention of the legislature was to cut off even the vested right; and that it was so by implication as well. There is no dispute as to the proposition that retrospective effect is not to be given to an Act unless the legislature made it so by express words or necessary implication. But in the instant case, it appears that this was the intention of the Legislature. Similarly Courts will construe a provision as conferring power to act retrospectively when clear words are used. We find both the intention and language of the Amendment Act clear in these respects”

9. In the case of ***Surain Singh and others vs. Lakhmira Singh and others, 2001(9) SCC 250***, two Judges Bench of the Apex Court made reference for consideration of the matter by larger Bench. The earlier judgment in the case of ***Darshan Singh vs. Ram Pal Singh (supra)*** was by three Judges Bench of the Apex Court. Before the larger bench could decide the reference, appeal filed by Surain Singh was dismissed for want of prosecution.

10. It was so observed by Division bench of this Court in case ***Kamakar Singh and others vs. Didar Singh and others (supra)***:-

“10 In Surain Singh, doubt was expressed about the