

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3252 of 2012(O&M)
Date of decision : April 12th, 2016

Renu Chugh and others

..... Appellants

Versus

Parshotam Mohan Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikas Kumar, Advocate
for the appellants.

Mr. S. K. Aneja, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not? Yes
3. Whether the judgment should be reported in the digest?

Amit Rawal, J.

The question involved in the present appeal is as to whether the arbitration award made rule of court amongst the parties giving restricted right to Ram Devi widow of Murari Lal would become absolute owner as per provisions of Section 14 (1) of the Hindu Succession Act, 1954 or not much less whether sub Section 14 (2) would apply.

Before advertng to the rival submissions of the counsel for the parties, It would be apt to give preface of the matter.

The plaintiffs-appellants instituted a suit seeking declaration to the effect that the Will dated 4.7.1991 allegedly

executed by Ram Devi widow of Murari Lal was forged, false, fictitious, fabricated much less not binding on the rights of the plaintiffs and the decree dated 11.9.1990 suffered by Ram Devi in favour of Deepak Kumar in Civil Suit No. 923-1 of 1990 titled as Deepak Kumar Vs. Smt. Ram Devi is also null and void and not binding on the rights of the plaintiffs on the premise that plaintiffs and defendant Nos. 1 to 5 are legal heirs of Smt. Ram Devi and Murari Lal. Ram Devi died on 4.3.1997 leaving behind the plaintiff and defendant Nos. 1 to 6 whereas Murari Lal died during life time of Ram Devi. On 23.7.1987 in order to settle the dispute of the property, the parties executed an agreement for appointment of an arbitrator to settle the dispute amongst sons, daughters and Ram Devi. The arbitrators were appointed. They gave their award on 18.10.1987 and as per the award Ram Devi was made limited owner of the property with a rider that she was prohibited to sell, mortgage or will, out the property fallen to her share and after her death his all four sons, plaintiff and defendant Nos. 1 to 3 shall inherit her property in equal share. The trial court dismissed the suit similarly, the lower appellate court affirmed the finding of the trial court.

Mr. Vikas Kumar, learned counsel appearing on behalf of the appellants submitted that the property was not given to Ram Devi for the purpose of maintenance or a life estate, rather she had put a curtailment on her right by accepting the award. The award was made rule of the court. In support of his contention, he has drawn attention of this Court to para No.4 of the award which reads thus:-

“Smt. Ram Devi was given the reserve area without the drawing of lots on all the above moghas because Smt. Ram Devi is to be the owner for her life estate only. She will not be entitled to sell, alienate, mortgage or will out the property falling to her share. After her death her all the four sons namely Sarv/shri Parshotam Mohan Chugh, Surinder Mohan Lal, Varinder Mohan Lal, Narinder Mohan Lal shall inherit property in equal share. Keeping this matter in view her kurra has been reserved in such a manner that it is adjacent to the kurras of all her four sons named above.”

He further contended that the ratio decidendi culled out in the judgment relied upon by the trial court and as well as **Vaddeboyina Tulasamma and others Vs. Vaddeboyina Sesha Reddi(dead) by L.Rs 1977 AIR (SC) 1944** would not be applicable. Ram Devi had already accepted partition and curtailed her right viz-a-viz claim to the absolute ownership and proviso to Section 14 (1) would not apply.

“i) Whether the findings of the court below in declining the relief of declaration sought by the plaintiffs are vitiated having been based upon mis-reading, mis interpretation and mis construction of the award decree dated 21.5.1988?

ii) Whether the courts below miserably failed to appreciate the fact that the award dated 21.5.1988 was binding on the parties and validity of the same cannot be challenged in the collateral proceedings.

iii) As to whether section 14 (1) of Hindu Succession Act 1956 would have any application to the instant proceedings or not?

In support of his contentions he further relied upon the judgment rendered by Hon'ble Supreme Court in **B. T. Govindappa Vs. B. Narasimhaiah AIR 1991 SC 1969** to contend that where the lady had put a restriction on her right in an immovable property, she would not become absolute owner as per Section 14 (1) of the Hindu Succession Act, 1956. In essence the award accepted by the parties out of court cannot be set up as a defence to the suit. This view is supported by the judgment in **Kehar Dass Vs. Tarak Singh and another AIR 1974 P&H 133 (V.61,C.47)**, wherein it has been held that where parties had accepted a settlement out of the court by virtue of an award, award cannot be set up as a defence to the suit. In essence, the party would be stopped to claim contrary to what has been agreed to.

Mr. S.K. Aneja, learned counsel for the respondents submitted that the ratio decidendi culled out in **Vaddeboyina Tulasamma and others'case (supra)** is squarely applicable to the present case as Ram Devi had pre-existing right. It was moral duty of Murari Lal to take care of his wife, the fetter imposed upon her in the award would not brand her to be limited owner but as an absolute owner as per provisions of Section 14 (1) of the 1956 Act. In support of his contentions he relied on the judgment in **Kartar Singh Vs. Jangir Singh 2016 (1) PLR 472, Badri Pershad Vs. Smt. Kanso Devi AIR 1970 SC 1963** (1) to contend that concurrent finding cannot

be interfered. In regard to the aforementioned contention he has relied upon the **Major Singh Vs. State of Punjab 2000 (4) SCT 1049** and urges this court for affirming the judgment and decree of the courts below and dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and the case law cited at bar.

In the proceedings initiated for making award rule of the court Ram Devi was impleaded as respondent No.1. The court below while returning the finding on Issue No.1 to 3 vide order dated 30.9.2008 passed in Civil case No.1-11/27.11.1998/2004 as under:-

“In view of the written statement/reply filed by the respondents No. 1 to 3 and 5 to 7 that the award be made a rule of the court and objections by respondent No.4 being withdrawn and statement of Ld.counsel for LR's of respondent No.4 being recorded in this regard separately that the award dated 18.10.1987 be made a rule of the Court, the award dated 18.10.1987 is made rule of the court and the issues are decided accordingly.”

In view of the aforementioned facts, respondent No.1 acknowledged her right as granted to her by award dated 18.10.1987 and on conjoint reading of the award and as well as finding on Issue Nos. 1 to 3 Ram Devi being party to the proceeding curtailed her right, therefore, she could not have willed away the property in the manner and mode as has been done. In essence, after her death the property as per decree would devolve upon her four sons, thus, she cannot become absolute owner as per provisions of Section 14 (1) but limited owner as per proviso to Section 14 (2). Section 14 (2) apply to any property acquired by way of gift or under a will or any

other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

The award does not gave any right of maintenance or arrear to the widow Ram Devi, thus, she was not eligible or entitled to transfer ownership during her life time. It was her limited estate, and would not ripen into absolute ownership as per provisions of Section 14 (1) but the ratio decidendi culled out in **Kartar Singh's case (supra)** would apply as there was a restriction imposed on Ram Devi, not to alienate, create third party rights. The principles culled out by the Hon'ble Supreme Court in **Vaddeboyina Tulasamma and others' case (supra)** are reproduced herein below:-

(4) Sub-section (2) of s. 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 recognise preexisting rights. In such cases a restricted estate in favour of a female is legally permissible and s. 14(1) will not operate in this sphere. Where, however, an instrument merely de- clares or recognises a pre-existing right, 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 en- larged into. an absolute one by force of s. 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or trans- ferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub- s. (2) and would be

governed by s. 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like "property acquired by a female Hindu at a partition", "or in lieu of maintenance" "or arrears of maintenance" etc. in the Explanation to s. 14(1) clearly makes sub-s. (2) inapplicable to these categories which have been expressly excepted from the operation of sub-s. (2).

(6) The words "possessed by" used by the Legislature in s. 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same: Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of s. 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words "restricted estate" used in s. 4(2) are wider than limited interest as indicated in s. 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee."

As per principle No.7 the words "restricted estate" used in Section 14 (2) is wider than limited interest as indicated in Section 14 (1). By virtue of making award rule of the Court Ram Devi had curtailed her right and interest in the property. In essence,

acknowledged the restriction as envisaged in the award and thus, was not entitled to transfer the property during her life time, much less bequeath the property by Will.

In view of the aforementioned facts, the judgments and decrees of both the courts below are set aside and suit of the appellants-plaintiffs is decreed in toto. The questions of law framed above are answered in favour of the appellants-plaintiffs and against the respondents-defendants.

The Regular Second Appeal stands allowed.

April 12th , 2016
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(AMIT RAWAL)
JUDGE