

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3413 of 2012

Date of Decision: 27.09.2016

Hardev Singh and another

... Appellants

Vs.

Mirpur Hans Cooperative Agriculture Service Society Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?
3. Whether the order is speaking/reasoned?

Present:- Mr. H.S.Dhindsa, Advocate,
for the appellants.

Mr. J.S.Thind, Advocate,
for Mr. B.S.Sehra, Advocate,
for respondent No.1.

Amol Rattan Singh, J.

This appeal has been filed by the legal representatives of the plaintiff, after her suit seeking permanent injunction against the respondents-defendants was initially decreed in her favour by the learned Civil Judge (Junior Division), Ludhiana, but the judgment and decree of that Court was reversed in a first appeal filed by the 1st and 2nd respondents herein (defendants No.1 and 4), by the learned Additional District Judge, Ludhiana, vide the impugned judgment and decree dated 20.04.2012.

2. The facts leading up to the institution of the suit, are that the 2nd defendant, i.e. the Kanungo, Circle Dehlon, District Ludhiana (respondent

No.3 herein), issued an order dated 02.09.1998, stating therein that on account of some loan amount due and recoverable from Harchand Singh, the late husband of the plaintiff, a recovery of Rs.35,950/- was to be made from the plaintiff, pursuant to which her landed property would be put up on auction on 09.09.1998, in pursuance to an order issued by the Assistant Collector (Assistant Registrar) Cooperative Societies, Jagraon (defendant no.1-respondent no.2), if the loan amount was not deposited by her (plaintiff) by that date.

3. As per the plaintiff, her late husband, Harchand Singh, had availed of a loan from the Mirpur Hans Cooperative Agriculture Service Society Limited, in the year 1972-73, which he had actually repaid during his life time and a certificate dated 01.04.1974 was issued to him saying that he had cleared the said loan.

Harchand Singh is stated to have died in 1991, leaving no landed property in his name and as such, no property was inherited by the plaintiff or his other LRs, from him.

It was contended in the plaint that the suit property, i.e. land falling in various khasra numbers fully described in the plaint, was the self-purchased property of the plaintiff, in her own name, from money given to her by her parents, vide different sale deeds, and that mutations in that respect duly stood entered in her favour.

As such, it was contended that firstly, Harchand Singh was not liable to pay any loan, it already having been paid, and in any case, the said property could not be subject matter of recovery of the loan taken by Harchand Singh, the plaintiff not being either the borrower or the guarantor for the said loan.

Still further, it was stated that the loan dated back to more than 25 years and even during the life time of Harchand Singh, no proceedings were initiated by the Society or any of the other defendants, to recover it.

Consequently, a decree of permanent injunction was prayed for by the plaintiff, restraining the respondents from illegally and forcibly attaching, or selling in auction, her property.

4. Upon notice being issued to them, the defendants filed separate replies, with the 1st defendant, i.e. the Assistant Collector/Registrar, Cooperative Societies and the Society concerned, i.e. Mirpur Hans Cooperative Agriculture Service Society Limited, filing similar written statements.

It was stated that the jurisdiction of the civil Court in respect of matters relating to the Punjab Cooperative Societies Act, 1961 (hereinafter to be referred to as the Act), was specifically barred under Section 82 of that Act and the plaintiff, in fact, had remedies available to her in the form of an appeal and a revision under Sections 68 and 69 of the Act, against any action as proposed against her. Section 41(h) of the Specific Relief Act, 1963, was also cited, as being a bar on the maintenance of the suit.

Other than that, preliminary objections with regard to non-joinder of parties, no notice having been served under Section 80 CPC and the title of the 1st defendant not having been given correctly, it being Assistant Registrar, Cooperative Societies (though vested the powers of Assistant Collector), were also taken.

5. On merits, it was stated that since Harchand Singh had availed of a loan of Rs.7700/- from the Society, which was duly verified on 26.02.1974 by the Inspector, Cooperative Societies, Jagraon, and that loan had not been paid back, the action of the defendants in recovering it,

alongwith the interest due thereupon, was very much legal and valid.

It was denied that any certificate of clearance of the loan had been issued to the deceased on 01.04.1974. It was further contended that the loan still being outstanding against Harchand Singh, was confirmed from the verification of the register of the Society for the year 1977-78, wherein Harchand Singh had signed in Punjabi at Entry No.18, on page 20 of the register.

Further, it was stated that upon a resolution passed by the defendant Society on 26.08.1998, the matter had also been referred to arbitration under Section 55 of the Act, for a recovery of Rs.35,900/-, and that the said case was pending before the Arbitrator.

Therefore, in the interest of the Society, an order of attachment of the suit property had been passed on 31.08.1998 under Section 65 of the Act and the said order of attachment was also appealable before the Deputy Registrar under Section 68, with the remedy of revision also available to the plaintiff under Section 69.

6. As regards the suit property being the self-acquired property of the plaintiff, that fact was denied by the defendants, contending that it was purchased by deceased Harchand Singh and not by the plaintiff and as such, it could very much be attached and auctioned, to recover the amount of loan, and the interest accruing thereupon.

The order of attachment of the property, dated 02.09.1998, was admitted, though it was denied that any order auctioning the land was ever passed, in view of the fact that arbitration was still pending before the Arbitrator.

However, it was stated that upon the Award been passed, the

order of attachment could be withdrawn if it was passed in favour of the plaintiff and if it was upheld in any appeal/revision (filed by the Society). On the other hand, if the Award of the Arbitrator was passed against the plaintiff, then the suit property was very much liable to be auctioned for the purpose of recovery of the loan amount and the interest accruing thereupon.

7. The 2nd defendant, i.e. the Circle Kanungo, also filed a short written statement, stating that he had simply acted upon warrants of attachment received by him, issued by the 1st defendant, i.e. Assistant Collector, Societies, though after the order of stay passed by the civil Court was received, he had not taken any further action.

8. A replication was also filed by the plaintiff to the written statement filed by the 4th defendant, i.e. the Society, essentially reiterating what she had stated in her plaint and in fact, even denying the pendency of arbitration proceedings.

9. Upon the aforesaid pleadings, the learned Civil Judge framed the following issues:-

1. Whether this Court has jurisdiction to entertain the present suit? OPP
2. Whether no amount has been due against the plaintiff? OPP
3. Whether the land of the plaintiff has been attached in an unlawful manner? OPP
4. Whether the plaintiff is entitled to the decree of permanent injunction as prayed for? OPP
5. Whether this court has jurisdiction to entertain and try the present suit by virtue of Section 82 of Pb. Coop. Society Act? OPP
6. Whether suit is barred u/s 41(h) of the Specific Relief Act? If so, its effect? OPD
7. Whether the suit is bad for non-joinder of necessary

parties? If so its effect? OPD

8. Whether the suit is bad for want of prior notice u/s 80 CPC/ If so, its effect? OPD

9. Relief.

The plaintiff examined four witness, including her son, Hardev Singh, as her General Power of Attorney.

The defendants examined one Darshan Singh, Secretary of the defendant Society.

Both sides also led documentary evidence, the relevant of which would be discussed further ahead.

10. On the issue of jurisdiction (issues no.1 and 5), the Civil Judge found that those issues had already been decided in favour of the plaintiff by her predecessor, vide an order dated 26.11.1998, holding the civil Court to have jurisdiction.

A perusal of that order reveals that the trial Court found that the defendants had not denied that the land belonging to the late husband of the plaintiff had already been attached, which was also reflected in a copy of the *jamabandi* for the year 1986-87, exhibited by the plaintiff.

It was also found that no notice of the proceedings before attachment of the property was issued to the plaintiff and further, no revenue record showing that the plaintiff had inherited the suit property from her husband, had been produced by the defendants.

Thus, relying upon a judgment of this Court in **Mohinder Singh v. the Punjab State and others** (1981 PLJ 162), the learned Civil Judge held that a suit by the successor of a defaulter, in respect of property belonging to such successor, was not attachable and therefore, neither proper

proceedings having been followed, nor the suit property being attachable, the civil Court had jurisdiction to entertain the suit.

11. On the main issues, with regard to any amount being due against the plaintiff, her land having been attached in a lawful manner or not and whether she was entitled to a decree of permanent injunction, it was held by the learned Civil Judge, in the judgment delivered in the suit, that firstly, as per the documents placed on record, the suit property was not shown to be inherited by the plaintiff from her deceased husband. Also, she was not shown to be a guarantor of the loan alleged to have been taken. In fact, it was held to be proved that she was the sole owner of the property in dispute and further, the cooperative society had already attached the “Garha Khad” (manure pit) in compliance with an Award earlier passed and that the said Garha Khad was in the name of the husband of the plaintiff but no auction of that site had been conducted.

As regards the loan stated to have been taken by Harchand Singh, that was admitted by the plaintiff but the liability to pay that off, after the issuance of the clearance certificate, Ex.DX, dated 01.04.1974, was not proved by the defendants. No satisfactory explanation was held to have been given by them, as to how any loan was pending after the issuance of the said certificate.

Eventually, relying upon a judgment of this Court in **Paras Ram v. State of Haryana and others** 1993 PLJ 543, it was held that when an amount is to be recovered from a deceased, even after the dispute was referred to an arbitrator, the amount could not be recovered from his father and could only be recovered from the estate of the deceased person, as was in the hands of his legal heirs.

Thus, holding as above, the learned trial Court decided the main issues in favour of the plaintiff.

12. On the bar created by Section 41 (h) of the Specific Relief Act, it was simply held that there actually existed no such bar in this case.

Thus, having held in favour of the plaintiff all issues, the suit was decreed in her favour, with costs.

13. The 4th and 1st defendant filed an appeal in the first appellate Court, as already noticed.

That Court, after considering the facts, the evidence and the judgment of the lower Court, found that as regards Ex.DX, i.e.the document stated to be a clearance certificate, stating that Harchand Singh was not a defaulter, nothing had been mentioned therein that he had returned the loan that he had taken and in fact, there was no mention of any loan in the said document. Consequently, it was held that the plaintiff could not take any benefit from it, particularly when one of her own witness, i.e. PW2 Rajinder Singh, admitted the signatures of Harchand Singh in the register, Ex.PX, in the year 1977-78, against the entry at Sr. No.18, showing that Rs.7700/- was due from him. (Actually the entry is for the year 1978-79 and not 1977-78 as stated in the judgment of the first appellate Court).

That document also having been admitted by the plaintiff, and an audit report for the year 2002, Ex.D7, also having shown a loan outstanding against Harchand Singh, it was held that it could not be said that he had repaid the loan to defendant No.4, i.e. the Society.

14. Dealing with the issue that the suit property owned by the plaintiff could not be attached or auctioned as it was herself acquired property, it was held that no doubt the *jamabandies* Exs.PB and PC revealed

that the plaintiff was the owner of the suit property, but the question was (as considered by the first appellate Court) as to whether a suit for permanent injunction was maintainable or not.

It was held that no order of attachment of the suit land had been challenged in the head note of the plaint, though in paragraph 5 the order dated 02.09.1998 had been referred to, further praying in paragraph 8 of the plaint that the said order of attachment was null and void and otherwise liable to be cancelled. However, it was further observed by the learned Additional District Judge, that the order dated 02.09.1998 had not been proved on record as only a photocopy of the said order has been placed on record as Mark-1 and as such, to prove that the order of attachment was in respect of the property that she was seeking injunction against, the said order had to be specifically proved.

Other than the above, it was held that the plaintiff could also file objections against the attachment order but not having done so, a suit for permanent injunction would not be maintainable, restraining the defendant from attaching and selling the suit property.

15. It was further found by the lower appellate Court, that during the pendency of the suit, an Award had, in fact, been passed against the plaintiff (Surjit Kaur) and others, on 05.12.1998, a copy of which had been placed on record as Ex.D3. Vide the said Award, a recovery of the loan amount had been ordered to be made from (by then the deceased) plaintiff, Surjit Kaur and from others. That Award was also never being subject matter of challenge in the suit in the present *lis*, nor any amendment having been sought to challenge it, either after or during the pendency of the suit, or the appeal, it was, effectively, held that the suit itself was not maintainable.

Hence, finally holding that the Award not being subject matter of the present *lis*, it could not have been adjudicated upon by the trial Court.

Holding as above, the appeal of the defendant was allowed and the suit of the plaintiff dismissed by the first appellate Court.

16. Before this Court, Mr. H.S. Dhindsa, learned counsel for the appellants (the LRs of the original plaintiff), firstly submitted that even the lower appellate Court had not held that the suit property was not the self-acquired property of the plaintiff. Hence, he submitted that the judgments relied upon by the learned Civil Judge, to hold that it was only the estate of the deceased which could be attached and auctioned, to realise the loan due from the deceased, were not even distinguished by the first appellate Court.

He next submitted that as a matter of fact, there was no reason for that Court to disbelieve the certificate, Ex.DX, dated 01.04.1974, that certificate very clearly having stated that Harchand Singh was not a defaulter.

Learned counsel further submitted that in any case, the loan was admittedly taken in the year 1972-73, hence, recovery of such a loan pursuant, to a resolution dated 26.08.1998, was wholly and completely barred by time.

He next submitted that earlier also an Award had been passed for recovery of the loan amount, as was noticed even by the learned Civil Judge, from the testimony of PW1, Mehtab Singh, brother of late Harchand Singh, and the “Garha Khad” (manure pit) had been ordered to be attached. However, the manure pit and the land beneath it had never been auctioned; hence, in any case, fresh proceedings against the plaintiff, in respect of her own personal property, were not maintainable and if at all any loan was

legally due from the late Harchand Singh, husband of the plaintiff, it could have been satisfied from the auction of the land of the manure pit.

Lastly, Mr. Dhindsa submitted that second arbitration proceedings were not maintainable in any case.

He, therefore, prayed that the appeal be allowed and the judgment of the lower appellate Court be reversed and the judgment and decree of the learned Civil Judge be reinstated, decreeing the suit in favour of the plaintiff.

17. On the other hand, Mr. Thind, learned counsel for the 1st respondent, i.e. the Cooperative Society, though could not state as to what had happened pursuant to the arbitration proceedings concluded during the pendency of the suit in the present *lis*, however, submitted that the learned lower appellate Court had not erred in holding that the loan taken by Harchand Singh was not proved to have been returned and as such, recovery from his LRs was very much permissible.

He, therefore, naturally, prayed for dismissal of the appeal.

18. Having considered the aforesaid arguments and the judgments of the Courts below, it first must be stated that though, as regards the recovery of a loan admittedly taken in the year 1972-73, *prima-facie* at least, no proceedings for such recovery would lie 25 years after the loan was granted; however, nothing further is being said in that regard by this Court, as firstly, no issue at all was either framed or pressed before the Courts below and no evidence in that regard was led, as to by when the loan was finally payable by Harchand Singh. If the loan itself was to be paid back over a period of more than 20 years, then obviously, the recovery proceedings initiated in 1998, may not have been time barred. However, nothing further is

said in that regard because the actual proceedings for recovery were subject matter of the Award before the Arbitrator, which admittedly is stated to have been passed; though of course, learned counsel for the appellant had submitted that the Award was not maintainable, an earlier Award already having been passed qua the same loan, pursuant to which the “Garha Khad”/manure pit was attached.

Both the Awards are stated to have been passed, upon the matter having been referred to an Arbitrator under Sections 55 and 56 of the Act. Thus, any grievance that the appellants (LRs of the plaintiff) may have against the Award itself, would be subject matter of appropriate proceedings under the Act, the jurisdiction of the civil Court in that regard being specifically barred in terms of Section 82 of the Act.

19. Having said that, the next question would be as to whether the suit filed in the present *lis*, itself was also barred under Section 82 or not.

On that issue, I agree with the learned counsel for the appellant, as also with the view taken by the learned Civil Judge, that a suit filed by the plaintiff, being one seeking permanent injunction specifically in respect of the suit property that was contended by her to be her self acquired property, it not having devolved upon her from the estate of deceased Harchand Singh, was very much maintainable, if the property was shown to have been indeed not the property of the deceased. In the opinion of this Court, a loan given to the deceased, could not be satisfied from the self-acquired property of the spouse of the deceased, such spouse, or any other legal heirs, not having been shown to be a guarantor of the loan advanced by the respondent Society, to Harchand Singh, in the year 1972-73.

I also agree with learned counsel for the appellant, that

observation of the lower appellate Court is erroneous, to the effect that the plaintiff had not shown that the suit property did not devolve upon her by inheritance from Harchand Singh and therefore, it could not have been held to be herself acquired property. The learned Civil Judge, specifically with reference to the records, found that the suit property was not inherited by the plaintiff from her husband and in fact, even the learned lower appellate Court noticed that as per the *jamabandies* (records of rights for the years 1976-77 and 1996-97), Exhibits PB & PC, revealed that the plaintiff was the owner of the property. However, thereafter, that Court, without further elaboration, went on to hold that a suit for permanent injunction was not maintainable in view of the fact that the order dated 02.09.1998, by which the suit property had been ordered to be attached, was never proved on record.

20. In this regard, it must be stated that firstly, the said order though undoubtedly not exhibited, was fully and completely admitted by the defendants, who defended it to the hilt, on the ground that the suit property was very much attachable vide the said order, in view of the fact that the plaintiff was the legal heir of Harchand Singh and as such, her property could be attached, though, of course, stating that it was not her self-acquired property.

Thus, as regards a suit for permanent injunction not being maintainable, on the ground that the order of attachment was not exhibited, though otherwise it may have been a valid ground for rejection of the plaint, however, with the defendants specifically admitting and defending the said order, in the opinion of this Court, it became wholly unnecessary to prove the original order received by the plaintiff.

21. Consequently, the findings of the learned lower appellate Court,

on the issue of the non-maintainability of the suit for permanent injunction reversed and the finding of the learned Civil Judge in the judgment dated 15.06.2009 is upheld, as is the earlier order dated 26.11.1998, upholding the jurisdiction of the civil Court to entertain the suit and adjudicate upon the suit, despite the bar contained in Section 82 of the Act.

22. Next, coming to the finding of the first appellate Court, to the effect that the plaintiff had not proved that she had purchased the suit property from her own resources.

That, in fact, is a rather strange finding, when that Court itself noticed that the *jamabandi* for the year 1976-77 showed her to be the owner of the property.

The learned Civil Judge, on the other hand, as already discussed, had specifically found that the suit property had not been inherited by the plaintiff. That finding is borne out, (as in fact, is the observation of the first appellate Court itself), from a perusal of Ex.PB, which is the *jamabandi* for the year 1976-77, by which the plaintiff, Surjit Kaur, is shown to have become the owner of the land described therein. Admittedly, her husband Harchand Singh, died in the year 1991; thus, obviously, there was no question of any inheritance, by devolution of the suit property, upon the plaintiff from him. It has also not been shown from the record that the suit property was gifted to her by her husband in 1976-77, though that again may not have amounted to the property not being her self-acquired property, unless it could be shown that such gift was only to defeat the purpose of the recovery of the loan etc. However, no such gift deed, or any mutation entry, having been proved, with regard to the property having been gifted to Surjit Kaur by her husband, that issue also does not arise.

23. Therefore, the suit land having been proved to be the personal property of the plaintiff, not having been inherited by her as part of the estate of the deceased, I find no reason to differ with the judgments of three co-ordinate Benches of this Court, holding that such property cannot be attached or made subject matter of recovery of a loan advanced to a deceased person.

The judgments relied upon by the learned Civil Judge were in the cases of **Gurmukh Singh vs. The State of Punjab and others** 1983 PLJ 82, *Mohinder Singh* (supra) and *Paras Ram* (supra).

Even though the case of *Gurmukh Singh* may not wholly apply to the present case, as the deceased in that case was a Secretary of the Society and the issue was recovery of an amount allegedly misappropriated by him, however, in *Mohinder Singhs'* case, it was held, in reference to Section 158 (2) (xiv) of the Punjab Land Revenue Act, 1887, that a suit instituted by a person other than the defaulter, to establish that the property proceeded against was not the property of the defaulter, upon which the land revenue was due, was very much maintainable.

It may be noticed here that the Punjab Land Revenue Act also contains a bar on the jurisdiction of civil Courts, on all matters in terms of the Act, as are within the jurisdiction of the revenue officers, including realization of land revenue. (Such exclusion of the jurisdiction of civil Courts is contained in Section 158 of that Act.

More importantly, in a subsequent judgment in *Paras Rams'* case, it was held in reference to the Punjab Cooperative Societies Act itself, that the amount due from the deceased could not be recovered from the petitioner (a writ petition having been filed in that case), as he had not succeeded to the estate of the deceased.

Similarly, in Satya Narain v. State of Haryana (1993) SCC On-Line P&H 296 also, the same view was taken by a co-ordinate Bench of this Court, relying upon on yet another judgment in Subhash Chander v. State of Haryana 1980 PLR 497.

I see no reason to take a view different from the one taken in the aforesaid judgments, with which this Court respectfully agrees.

24. No doubt, had the recovery been sought to be made from the estate of deceased Harchand Singh, a civil suit would have been barred, independent remedies against the order of attachment etc. being very much available under the Act itself in the form of Sections 68 and 69, providing for an appeal and a revision against such orders, as also with regard to any Award passed by the Arbitrator to whom the matter can be referred to under Section 55. However, the plaintiff or even the present appellants, who are the LRs of the plaintiff as also of the late Harchand Singh, not having been shown to be guarantors of the loan advanced to Harchand Singh, the personal property of the plaintiff, as was not inherited by her from the estate of the deceased, could not have been made subject matter of realization of the loan advanced to Harchand Singh.

25. It needs to be clarified here that as regards the maintainability of second arbitration proceedings (as contended by learned counsel for the appellants), and the validity of those proceedings, both on account of any limitation or even on merits, no comment upon that issue is being made by this Court, the Award of the Arbitrator not being subject matter of this *lis* which it also could not have been, in view of bar under Section 82 of the Act. However, even holding as such, it is made clear that even pursuant to the aforesaid Award, if it is eventually sustained finally, after any appeal or

revision etc. that it may be subject matter of, the suit property involved in the present *lis*, having been found not to be the property from the estate of the deceased Harchand Singh, it cannot be attached or used for the recovery of the loan advanced to the late Harchand Singh.

26. Having held as above, this appeal is allowed and the impugned judgment and decree of the learned lower appellate Court, dated 20.04.2012, as set aside, with judgment and decree of the learned Civil Judge (Junior Division), dated 15.06.2009, reinstated. The suit of the plaintiff is decreed with costs through out, which are quantified at Rs.5000/-

A decree-sheet be accordingly drawn up.

September 27, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE