

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

1. RSA No.614 of 2012 (O&M)
Date of decision : 12.05.2016

Harinder Kaur and others ...Appellants

Versus

Inderpal Singh and others ...Respondents

2. RSA No.399 of 2015 (O&M)
Date of decision : 12.05.2016

Jagir Kaur and others ...Appellants

Versus

Inderpal Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. C.L. Verma, Advocate &
Mr. Aditya Dassaur, Advocate for the appellants.

Mr. Premjit Kalia, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

CM No.1106-C of 2015 in RSA No.399 of 2015

For the reasons stated in the application, which is duly supported
by an affidavit, delay of 28 days in refiling the appeal is condoned.

Application is allowed.

CM No.1107-C of 2015 in RSA No.399 of 2015

Prayer in the application is for deleting the name of Gurbax

Singh-respondent No.2 who has already died because his LR's are already on record.

For the reasons stated in the application, same is allowed.

CM No.1108-C of 2015 in RSA No.399 of 2015

This is an application under Order 41 Rule 27 CPC, for additional evidence.

No ground is made out for placing on record the additional documents.

Dismissed.

Main case

This order of mine shall dispose of two regular second appeals bearing No.399 of 2015 arising out of Civil Suit instituted on 07.10.2004 (hereinafter to be referred as First Suit) at the instance of wife and daughters of Gurbax Singh claiming declaration that Tabdil Malkiat nama i.e. transfer deed dated 23.09.2004 executed by Gurbax Singh in favour of defendant No.2 being illegal, null and void in respect of suit property and consequential relief of permanent injunction, has been dismissed by both the Courts below.

Mr. C.L. Verma, learned counsel appearing on behalf of appellants submits that aforementioned transfer deed allegedly executed by Gurbax Singh was challenged by filing the aforementioned suit during the lifetime of the Gurbax Singh and thereafter Gurbax Singh died on 26.02.2005. Suit property is in respect of land measuring 120 kanals. Property at the instance of Gurbax Singh was ancestral, therefore, he could not transfer the property in favour of defendant No.2-son-Inderpal Singh born from loins of second wife. Rigour of amendment caused in Section 6 of the Hindu

Succession Act on 09.03.2005 would be altered way. Both the Courts below erroneously dismissed the suit and urges this Court for formulation of the question of law as culled out in memorandum of appeal.

He further submits that another suit bearing No.150 of 2005 (hereinafter to be referred as Second Suit) was filed at the instance of Inderpal Singh seeking restraint order against the defendant from interfering into the peaceful possession and dispossession in an illegal and forcible manner. Trial Court though had dismissed the suit but lower Appellate Court reversed the findings and hence, present appeal.

Mr. Premjit Kalia, learned counsel appearing on behalf of respondent-defendants in first suit and respondent-plaintiff in second suit submits that suit was not maintainable in view of ratio decidendi culled out by Hon'ble Supreme Court in *Prakash and others Vs. Phulavati and others, 2015 (4) RCR (Civil), 952*, wherein it has been held that amendment by Act No.39 of 2005 in Section 6 of Hindu Succession Act, 1956 shall apply prospectively and not retrospectively until and unless either expressly or by necessary intendment amendment held to be retrospective. All the alienation of the property prior to the aforementioned period cannot be challenged by the daughter. In the instant case, alienation/transfer deed is of 23.09.2004, suit was filed in October 2004. No cause of action accrued in favour of appellant to institute the suit and rightly so, the first suit has been dismissed and in the second suit they have been injuncted.

I have heard learned counsel for the parties and appraised the paper book.

The ratio decidendi culled out by Hon'ble Supreme Court in

judgment cited (Supra) squarely applies to the facts and circumstances of the present case. In view of the case noticed above, suit was filed on 07.10.2004, transfer deed is of 23.09.2004, amendment has been caused under the Hindu Succession Act, on 09.03.2005. It has been held that amendment is not retrospective, and therefore, it will not relate back to the date of the transfer and filing of the suit. Even Gurbax Singh died on 26.02.2005 and the suit was instituted during his lifetime though died during the pendency of the suit.

In view of what has been noticed above, no ground for interference is made out, much less, no substantial questions of law arises.

Judgments and decrees of both the courts below in the first suit are affirmed and judgment and decree of the lower Appellate Court in Second RSA is affirmed.

Appeal stands dismissed.

12.05.2016

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(AMIT RAWAL)
JUDGE