

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

RSA No. 6169 of 2015 (O&M)

Date of decision : 29.04.2016

Raghuvir Singh

..... Appellant(s)

Versus

Ram Singh and others

.... Respondent(s)

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Satbir Rathore, Advocate,
for the appellant(s).

JITENDRA CHAUHAN.J.

This regular second appeal raises the question as to whether Smt. Shakuntla Devi, defendant No. 1, wife of the plaintiff has become the absolute owner of the property by virtue of the provisions of Section 14(1) of Hindu Succession Act, 1956 (for brevity 'the Act').

The suit filed by the plaintiff was decreed by both the Courts below vide impugned judgments and decrees dated 21.07.2014 and 20.10.2015.

The plaintiff husband filed suit for declaration to the effect that defendant No. 1 has only life estate/interest in land measuring 37 kanals 19 marlas in dispute situated at Village Pandori Baghel Singh, H.B. No. 411, Tehsil Mukerian, Distt. Hoshiarpur, bearing khasra no. Rect. No. 13, Killa No. 16/1, 17/1, 24/2, 25, Rect. No. 19, Killa No. 5,

Rect. No. 20, Killa No. 1/1, as per jamabandi for the year 2005-06 and the impugned sale deed/transfer deed dated 20.08.2009 executed by defendant No. 1 in favour of defendant No. 2 in respect of the above said land in dispute and mutation of transfer No. 730 on the basis of it in the revenue record are null, void and not binding upon the right of the plaintiff in respect of the land in dispute. The plaintiff also sought prohibitory decree against the defendant.

The plea of the plaintiff is that defendant No. 1 is his wife. Defendant No. 2 is the son and defendant No. 3 is the grandson of the plaintiff. The suit land was given to the defendant No. 1 only for limited period i.e. till her life and defendant No. 1 has no right to mortgage, sell or transfer it in any manner. On the death of the plaintiff, the suit land would be inherited by his legal heirs. Despite the aforementioned restriction, the defendant No. 1 executed lease deed for a period of 99 years in favour of defendant No. 2. The plaintiff had to file a civil suit No. 278 dated 14.12.1996 titled as “Ram Singh Vs. Shakuntla Devi and others”. The suit was dismissed by the trial Court. However, the same was decreed by the Appellate Court of Shri. C.D. Gupta, learned Additional District Judge, Hoshiarpur, vide judgment and decree, dated 03.01.2002. In the aforesaid judgment, it has been held by Additional District Judge that the defendant No. 1 had only life estate qua the property in dispute and the lease deed executed by her in favour of defendant No. 2 has been declared null and void. In spite of the aforesaid judgment, defendant No. 1 had executed a sale deed dated

20.08.2009 in respect of the suit land in favour of defendant No. 2. Mutation has also been sanctioned in favour of defendant No. 2. Hence, the suit for declaration and permanent injunction.

Upon notice, defendant No. 1 appeared and contested the suit by pleading that she had become full owner of the suit property by virtue of Section 14(1) of the Act. She has absolute right to deal with the property in any manner she likes. The judgment dated 03.01.2002 passed by Additional District Judge, Hoshiarpur is not binding upon her.

Defendant No. 2/appellant appeared and filed written statement. Defendant No. 2 adopted the stand taken by defendant No. 1.

After appraisal of the evidence, the learned trial Court decreed the suit holding that the rights of the parties had already been decided by judgment and decree, Ex. P1, passed by Additional District Judge, Hoshiarpur. There remained nothing to be decided as the *lis* had already been decided between the parties. Consequently, the sale deed executed by defendant No. 1 in favour of defendant No. 2 and the subsequent proceedings were held to be null and void.

Feeling aggrieved, defendant No. 2 filed an appeal before the lower Appellate Court. The lower Appellate Court upheld the judgment and decree passed by the trial Court and dismissed the appeal vide judgment and decree dated 20.10.2015.

This regular second appeal has been filed by defendant

No.2 assailing both the aforesaid judgments and decrees.

The sole argument of learned counsel for the appellant is that defendant No. 1 being the wife of the plaintiff had become owner of the property by virtue of Section 14(1) of the Act. She had a pre-existing right in that property. Once the property is granted to the wife as a limited estate, and she had a pre-existing right, and she was in possession of the property as owner, notwithstanding the terms of grant, she had acquired full ownership of the property in dispute. Consequently, she was competent to deal with the property in any manner.

I have heard the learned counsel for the appellant and gone through the case file.

The argument raised by the learned counsel for the appellant that defendant No. 1 had become full owner of the property, was considered and rejected in the earlier round of litigation. Vide judgment and decree dated 03.01.2002, passed by Additional District Judge, Hoshiarpur Ex. P1, the rights of the parties stood decided. The operative part of the judgment Ex. P1, is reproduced as under :-

“The suit of the plaintiff for declaration to the effect that defendant No. 1 has only life estate/interest in the land measuring 37 kanals 19 marlas situated at Village Pandori Baghel Singh, Tehsil Mukerian, District Hoshirapur as fully detailed in the head note of plaint and the lease deed executed by defendant No. 1 in favour of defendant No. 2

and 3 for 99 years is null and void and not binding upon the rights of the plaintiff is decreed.”

The plaintiff/respondent No.1 was held to be the owner and the nature of right of defendant No.1 in the suit property was held to be a limited one. That judgment Ex. P1 has attained finality. The same question cannot be re-agitated in the subsequent proceedings. Therefore, both the Courts below were right in holding that since the right stood crystallized in the earlier litigation, there was no necessity to go into the same question again. This Court feels that the question of fact, if decided once, cannot be re-agitated again and again. A party cannot be put to peril twice. There is no question of law in the present regular second appeal. There is no misreading or misinterpretation of the evidence.

Consequently, the appeal is dismissed.

29.04.2016
SN

(JITENDRA CHAUHAN)
JUDGE