

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5847 of 2014(O&M)

Date of Decision:13.5.2016

Bahadur Singh

---Appellant

vs.

Baljit Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Mahesh Gupta, Advocate
for the appellant

Mr. S.S.Salar, Advocate
for respondents No. 1 and 2

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

Rekha Mittal, J.

The present appeal has been directed against the consistent findings recorded by the Courts below whereby suit filed by Baljit Kaur and Jeet Kaur, daughters of Joginder Singh for joint possession was partly decreed by the trial court vide judgment and decree dated 14.12.2011 and

findings recorded by the trial court were affirmed in appeal preferred by Bahadur Singh and Malkiat Kaur wife of Bahadur Singh by way of dismissal of the appeal vide judgment and decree dated 20.10.2014.

The present litigation pertains to inheritance to the estate of Sh. Joginder Singh and Ms. Jasmail Kaur, parents of the appellant as well as contesting respondents. Joginder Singh was owner of suit land measuring 351 kanals 12 marlas and left behind five class-I heirs namely Jasmail Kaur widow, Bahadur Singh son, Baljit Kaur, Jeet Kaur and Guddi, daughters. The daughters of Joginder Singh instituted civil suit No. 251 dated 21.3.1991 claiming the plaintiffs and defendants No. 2 and 3 namely Jasmail Kaur and Bahadur Singh to be owners in joint possession in equal share of land measuring 351 kanals 12 marlas left behind by Joginder Singh. In the said suit, they also challenged the unregistered Will dated 12.8.1990 purported to be executed by Joginder Singh in favour of Malkiat Kaur wife of Bahadur Singh and Jasmail Kaur widow of Joginder Singh, defendants No. 1 and 2 respectively in the said suit. The earlier litigation was decided on 27.7.1993 and suit filed by Guddi and others, daughters of late Joginder Singh was dismissed as withdrawn on the basis of compromise.

The present suit has been filed by two daughters of Sh. Joginder Singh namely Baljit Kaur @ Bibi and Jeet Kaur and the third daughter Guddi has been arrayed as proforma defendant. In regard to inheritance to the estate left behind by Ms. Jasmail Kaur, Bahadur Singh has set up a Will dated 19.7.1995 in his favour and the said will was held to be a genuine and valid testament left behind by Ms. Jasmail Kaur in favour of her son. Counsel for the parties have admitted that consistent findings

recorded by the courts below in regard to testamentary succession to the estate of Jasmail Kaur in favour of Sh. Bahadur Singh have not been challenged by the respondents/plaintiffs and therefore, dispute qua inheritance to the estate of Smt. Jasmail Kaur has attained finality. The present appeal pertains to right of the respondents/plaintiffs qua the estate left behind by Sh. Joginder Singh.

The sole submission made by counsel for the appellant is that as in the earlier suit instituted by Guddi and others, all the three daughters of Sh. Joginder Singh, a compromise dated 26.7.1993 was effected between the parties namely all the class-I heirs of Sh. Joginder Singh alongwith Malkiat Kaur wife of Bahadur Singh and the suit filed by Guddi and others was dismissed as withdrawn being compromised, the present suit filed by the respondents/plaintiffs asserting their right to inherit to the estate of Sh. Joginder Singh is not sustainable and, therefore, the judgments and decrees passed by the courts below by disregarding the proceedings in the earlier suit more particularly the compromise dated 26.7.1993 are liable to be set aside.

Counsel for the contesting respondents/plaintiffs has submitted that the compromise deed dated 26.7.1993 is the result of fraud and misrepresentation, therefore, has no adverse affect on rights of the respondents to inherit to their father. It is further argued that as in view of compromise dated 26.7.1993, the respondents relinquished their right in the suit property of value more than Rs. 100/-, the said compromise cannot be taken into consideration for want of registration as envisaged under Section 17 of the Indian Registration Act.

I have heard counsel for the parties, perused the paper book and the original records.

The substantial question of law that arises for adjudication is *“whether the respondents/plaintiffs can maintain the present suit in view of the compromise Ex. D1/C and dismissal of the earlier suit vide order dated 27.7.1993 Ex. D1/B?”*

Counsel for the respondents/plaintiffs has not disputed the factum that earlier suit titled “Guddi and others vs. Malkiat Kaur and others” pertains to inheritance to the estate of Sh. Joginder Singh and in the said suit, compromise Ex. D1/A was effected between the parties. It is also an admitted position of the case that Guddi and others withdrew the suit on the basis of compromise Ex. CX in those proceedings. A relevant extract from compromise Ex. D1/A, reads as follows:-

“(1) That the mutation regarding the estate of late Joginder Singh son of Nikka Singh of village Bhalwan sub tehsil Dhuri was sanctioned in the name of defendants No. 1 -2 on the basis of Khangi Will which is under challenge.

(2) That it has been settled that Bahadur Singh son of Joginder Singh will henceforth be the owner and in possession of $\frac{1}{2}$ share out of the share of his wife Malkiat Kaur defendant No. 1. The plaintiffs relinquishes their share in favour of their brother Bahadur Singh and $\frac{1}{2}$ share out of the share of Malkiat Kaur will be treated to be the share of plaintiffs which they left in favour of the brother Bahadur Singh.

(3) That as per this compromise, Jasmel Kaur widow of

Joginder Singh will be the owner in possession of ½ share and in the remaining estate of Joginder Singh- Malkial Kaur wife of Bahadur Singh (defendant No. 2) and Bahadur Singh son of Joginder Singh (defendant No. 3) will be the owner in possession in equal shares.

(4)That the parties will remain bound for the terms of the compromise and mutation will be got sanctioned accordingly.”

The suit filed by Guddi and others was dismissed as withdrawn in view of statement made by their counsel, reads as follows:-

“Statement of Sh. S.K. Sharma Advocate and Raghbir Rattan, Advocate *****

Compromise of the parties is Ex CX which is true and correct. Parties shall remain bound by it. Plaintiffs suit be dismissed as withdrawn being compromised.”

The Sub Judge Ist Class, Dhuri disposed of the suit vide order dated 27.7.1993 and a relevant extract therefrom reads as under:-

“Today parties have compromised. Statements of the Id. Counsel for the parties alongwith parties have been recorded.

In view of the said statement, present suit is dismissed as withdrawn, being compromised. File be consigned to the records.

Announced.”

This brings the Court to the submissions made by counsel for the contesting respondents in order to have an escape from the

consequences of the proceedings that took place in the earlier suit. Admittedly, Guddi and others did not file an application invoking provisions of Order 47 or Section 151 of the Code of Civil Procedure to challenge the compromise Ex. D1/C dated 27.7.1993. As the respondents did not challenge the said compromise in appropriate proceedings on any of the grounds nor any such plea was raised in the present proceedings that the compromise Ex. D1/C is not admissible in evidence for want of registration, the respondents cannot wriggle out of the compromise Ex. D1/C or to reassert their right to succeed to the estate of their father on the basis of natural succession. I would hasten to add that once a dispute pending before a Court of Law is settled by way of compromise between the parties by invoking the provisions of Order 23 CPC, the compromise recording creation or extinguishment of rights in immovable property does not require registration. Analyzed from any angle, the respondents/plaintiffs can't maintain a second suit for the same relief without getting the compromise Ex. D1/C and order dated 27.7.1993 Ex D1/B set aside in appropriate proceedings. The courts below have committed a gross error rather illegality in upholding plea of the respondents in regard to their entitlement to inherit to the estate of Sh. Joginder Singh by disregarding the compromise and dismissal of the earlier suit. In view of the above, the aforesaid question is answered in favour of the appellant and against the contesting respondents.

In view of what has been discussed hereinabove, the appeal is allowed. The judgments and decrees passed by the courts below in favour

of the contesting respondents to the extent of inheritance to the estate of Joginder Singh are set aside leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

13.5.2016
paramjit