

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.7979 of 2016 (O&M)

Date of decision:20.2.2017

Jagbir Singh Narwal

...Petitioner

Versus

Risal Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Kulvir Narwal, Advocate for the petitioner.
Mr.Sanjeev Kumar, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Present civil revision petition, at the hands of the plaintiff, filed under Article 227 of the Constitution of India, is directed against the order dated 12.10.2016 (Annexure P-8) passed by the learned trial Court, whereby application, moved by the plaintiff-petitioner for leading secondary evidence regarding sale-deed dated 6.4.1960 and Will dated 11.7.1992, was partly allowed only qua sale-deed, whereas his said application was declined qua the Will dated 11.7.1992.

Notice of motion was issued and the learned trial Court was directed to adjourn the case beyond the date fixed before this Court.

Heard learned counsel for the parties.

It is a matter of record and not in dispute that plaintiff-petitioner filed a suit for declaration, challenging Mutation No.1257 dated 26.2.1964. Basis of the suit of the plaintiff was that vide sale-deed dated 6.4.1960, he sold the area measuring 1008 sq. yards in favour of respondent No.1. However, vide Mutation No.1257 dated 26.2.1964, entire property owned by the plaintiff comprised in Killa No.84/1/2(5K-19M) and 84/2/3

(1K-19M), total measuring 7K-18M, came to be entered in favour of defendant-respondent No.1, including the house of the petitioner, which had already been constructed in the year 1959-60.

During pendency of his suit, plaintiff-petitioner moved an application vide Annexure P-4, for direction to defendant-respondent No.2 to produce the original sale-deed No.1129 dated 6.4.1960 and also the original Will dated 11.7.1992. However, vide reply (Annexure P-5), defendant No.2 denied the possession of original Will and existence of Will. It is pertinent to note here that petitioner-plaintiff, in his replication (Annexure P-3), has specifically pleaded at pages 35 and 36 of the paper-book that defendant No.1 executed the Will dated 11.7.1992 in favour of defendant No.2. Sale-deed as well as Will were pertaining to same suit property. Under these circumstances, plaintiff was left with no other option except to move application (Annexure P-6) for secondary evidence in respect of registered sale-deed dated 6.4.1960 as well as Will dated 11.7.1992. Respondent No.2 filed his reply vide Annexure P-7. After hearing the learned counsel for the parties, the learned trial Court partly allowed the application of the plaintiff-petitioner only qua the sale-deed and his prayer regarding the Will was declined.

A bare reading of the impugned order passed by the learned trial Court would show that learned trial Court altogether ignored the specific and categoric averments taken by the plaintiff-petitioner regarding Will dated 11.7.1992 in his replication, which was part of the pleadings. Petitioner-plaintiff was not going to change the nature of his suit, because he wanted to lead secondary evidence regarding the Will with a view to corroborate that the area sold by way of sale-deed dated 6.4.1960 was only

1008 sq. yards and not 7K-18M. Once the suit property and parties were the same, petitioner-plaintiff was entitled to lead secondary evidence regarding the sale-deed dated 6.4.1960 as well as the Will dated 11.7.1992. However, since the learned trial Court misdirected itself, while declining the prayer of the plaintiff qua the Will dated 11.7.1992, a manifest injustice has been done to the plaintiff-petitioner. Having said that, this Court feels no hesitation to conclude that since the learned trial Court could not appreciate the above-said material aspect of the matter, while passing the impugned order, the same cannot be sustained. It is the settled principle of law that rules of procedure are meant for advancing the cause of justice. Every court of law must make an endeavour to avoid multiplicity of litigation between the parties, with a view to do complete and substantial justice by effectively adjudicating the dispute. Further, every party must be granted sufficient and reasonable opportunity to put up its best case before the Court. No party to the litigation should be forced to go home with the grievance that it was denied reasonable opportunity by the court to put up its best case. Since neither the nature of suit was going to be changed nor any prejudice was likely to be caused to the respondents-defendants, learned trial Court ought to have allowed the application of the petitioner-plaintiff in toto instead of partly allowing the same.

So far as the judgments of Hon'ble Supreme Court relied upon by the learned counsel for respondent No.2 in **H.Siddiqui (D) Vs. A.Ramalingam, 2011 (4) SCC 240, Smt. J. Yashoda Vs. Smt.Shoba Rani, 2007(5) SCC 730, U. Sree Vs. U.Srinivas, 2013 (2) SCC 114, Azhar Sultania Vs. B.Rajamani & others, 2009(17) SCC 27** and judgment of this Court **Darshan Kaur Vs. The Amritsar Primary**

Cooperative Agricultural Development Bank Limited Amritsar and another, 2010 (1) RCR (Civil) 747 are concerned, there is no dispute about the observations made therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to respondent No.2, being distinguishable on facts. In the present case as noticed hereinabove, petitioner filed the application, seeking direction to the defendants for producing the original sale-deed as well as Will, however, defendants denied the possession of these two documents, leaving the petitioner-plaintiff with no other option except to move the application for secondary evidence. Existence of the documents has been established on record.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**, **Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75**, **State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275** and **State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533**.

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's** case (supra), reiterating its view taken in **Amrit Lal Manchanda's** case (supra) and **Mohd. Illiyas's** case (supra), which can be gainfully followed in the present case, read as under:-

11. "12....Reliance on the decision without looking into the factual background of the case before it is clearly

impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is

only an authority for what it actually decides.

Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (AII ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great

weight to be given to the language actually used by that most distinguished judge."

16. *In Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in *Shepherd Homes Ltd. V. Sandham* (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

15. *The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680*

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not

at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

Once the existence of both these documents namely sale-deed dated 6.4.1960 and Will dated 11.7.1992 has been duly established and production of originals thereof was denied by the defendants, plaintiff-petitioner was well justified on facts as well as in law to move the application under Section 63 read with Section 65 of the Indian Evidence Act, seeking permission to adduce secondary evidence in respect of registered sale-deed No.1129 dated 6.4.1960 as well as the Will dated 11.7.1992. Since the learned trial Court failed to appreciate the above-said peculiar fact situation obtaining in the instant case as well as the relevant settled principles of law in the correct perspective, while passing the impugned order, the same cannot be sustained for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order is set aside to the extent application of the petitioner-plaintiff was partly declined qua the Will dated 11.7.1992. Application dated 21.9.2016 (Annexure P-6), filed by the plaintiff-petitioner, stands allowed in toto.

Consequently, the plaintiff-petitioner shall be allowed to

adduce his secondary evidence in respect of registered sale-deed No.1129 dated 6.4.1960 as well as Will dated 11.7.1992.

Resultantly, with the above-said observations made, the present civil revision petition stands allowed, however, with no order as to costs.

20.2.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No