

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

**RSA No.3977 of 2010 (O&M)
Date of decision: 13.07.2017**

Charanjit Singh Walia

... Appellant

Vs.

Surinder Mohan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vijay Lath, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant regular second appeal, at the hands of the dissatisfied plaintiff, is directed against the concurrent findings of facts recorded by both the learned Courts below, whereby his suit for declaration was partly decreed, declaring him owner in possession to the extent of one half share of the suit property and for remaining half share, defendants No.2 to 7 were declared owners in possession by the learned trial Court vide its impugned judgment and decree dated 02.02.1993, which was upheld by the learned first appellate Court, dismissing the first appeal of the appellant vide impugned judgment and decree dated 12.01.2009.

Brief facts of the case, as recorded by learned trial Court in para 1 of its impugned judgment, are that Balwant Singh father of the plaintiff formed

a Joint Hindu Family and was the head and karta of the family. The plaintiff and Balwant Singh were the Hindu Co-parceners of the land mentioned in the head note of the plaint and this land vested in plaintiff by birth and plaintiff, thus, had 1/2 share as co-parcener and 1/2 share was held by Balwant Singh as co-parcener. Balwant Singh died on 31.08.1979 and had executed a valid Will of his 1/2 share in favour of plaintiff on 29.08.1979 with a sound disposing mind and thus became the full owner of the land in dispute. Balwant Singh left the wife and two daughters i.e. Harbans Kaur, Ranjit Kaur and Inderjit Kaur respectively, Harbans Kaur mother of plaintiff also died and she executed Will in favour of plaintiff. That Ranjit Kaur and Inderjit Kaur had given affidavit to the plaintiff admitting the Will dated 29.08.1979 executed by Balwant Singh but after the death of Ranjit Kaur, her sons started disputing the Will dated 29.08.1979 rather executed illegal sale deed dated 10.02.1982. That the plaintiff engaged Sh. M.M. Mittal, Advocate as his counsel and filed a suit for declaration challenging the sale deed executed by the LRs of Ranjit Kaur i.e. defendants No.1 to 7 that plaintiff was the owner and in possession of the land in dispute and when the suit was ripe for decision, his counsel secretly connived with counsel for defendants and compelled the plaintiff to sign the statement of the plaintiff by which plaintiff agreed to give 1/4th share in the land with a stipulation that if the defendants sell this 1/4th share, then they will sell this share to the plaintiff on the market rate but the counsel for the then defendants obtained illegal sale deeds executed in the name of his friends and relatives in connivance with the counsel for the plaintiff. That the plaintiff came to know about the sale deeds and immediately contacted his counsel Sh. M.M. Mittal, Advocate who got his signatures on blank papers but thereafter plaintiff took his brief back and also found letter dated 20.05.1987 addressed to him. That the

land had been further alienated and that sale deeds were also illegal and the plaintiff requested the defendants many times to admit the claim but they refused.

Having been put to notice, defendants appeared and filed their joint and contesting written statement, raising more than one preliminary objections. Defendants also filed their counter-claim. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff formed a joint Hindu family with his father Balwant Singh? OPP
2. Whether the suit property is an ancestral joint Hindu family co-parcenary property of the plaintiff and his father? OPP
3. Whether Balwant Singh executed a valid Will dated 29.08.1979 in favour of the plaintiff? OPP
4. Whether Ranjit Kaur and Inderjit Kaur, the predecessor-in-interest of the defendants submitted affidavits admitting the Will dated 29.08.1979 and the defendants are estopped from denying the Will and they are bound by their admissions? OPP
5. Whether the sale deeds executed by defendants No.2 to 7 are illegal, null and void? OPP
6. Whether the suit is barred under Order 23 CPC? OPD
7. Whether the plaintiff is estopped by his own act, conduct and admission from filing the present suit? OPD
8. What is effect of death of Inderjit Kaur on this suit? OPD
9. Whether defendants No.12 to 16 are bonafide purchasers for

consideration and without notice? If so its effect? OPD

10. Whether defendants No.1 to 7 are legal heirs and legal representatives of Inderjit Kaur deceased? OPD
11. Whether the judgment and decree dated 05.01.1987 is illegal, null and void and defendants No.1 to 7 have no right or share in the land in dispute? OPP
12. Whether plaintiff is entitled to the decree for declaration and in the alternative for possession of the suit land? OPP
13. Relief.

Then on 29.02.1992, the following additional issues were framed: -

- 12A. If issues No.2 & 3 are not proved, whether Inderjit Kaur inherited 1/4 share in the properties of Balwant Singh including the properties described in counter claim of defendants No.1 to 7? OPD
- 12B. Whether defendants No.1 to 7 are the legal heirs of Inderjit Kaur and succeeded to her estate? OPD
- 12C. Whether Harbans Kaur executed a Will in favour of the plaintiff thereby bequeathing her estate in his favour? OPP
- 12D. If issue No.12-C is not proved, whether defendants No.1 to 7 are to succeed to the estate of Harbans Kaur through Ranjit Kaur and Inderjit Kaur? OPD
- 12E. Whether defendants No.1 to 7 have one half share in the properties described in the counter claims are entitled to its separate possession by way of partition? OPD

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral

evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiff was entitled only to the extent of half share in the suit property, because he failed to prove himself as co-parcener and also could not prove both the Wills propounded by him, one allegedly executed by his father in his favour on 29.08.1979 and the other allegedly executed by his sister Harbans Kaur. Accordingly, suit of the plaintiff was partly decreed, declaring him owner in possession to the extent of one half share of the suit property.

Defendants No.2 to 7 were declared as owners in possession for the remaining half share of the suit property, by decreeing their counter-claim vide same impugned judgment and decree dated 02.02.1993. Feeling aggrieved, plaintiff filed only one appeal against that part of the impugned judgment and decree of the learned trial Court, whereby suit of the plaintiff was partly decreed. However, he did not file any appeal against said part of the impugned judgment and decree of the learned trial Court, whereby counter-claim of the defendants was decreed. First appeal filed by the plaintiff also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 12.01.2009. Hence this regular second appeal at the hands of the unsuccessful plaintiff.

Heard learned counsel for the appellant.

Before proceeding further, it is pertinent to note here that learned counsel for the appellant has fairly conceded that so far as the plea raised by the plaintiff-appellant before the learned Courts below that he was co-parcener with his father late Sh. Balwant Singh to the extent of one half share of the suit property is concerned, he does not intend to press the same as both the learned Courts below have held it against the appellant. He also submitted that he does

not intend to raise any argument about the validity of either of the Wills executed by his father late Sh. Balwant Singh and his mother late Smt. Harbans Kaur in favour of the appellant, as both the learned Courts below declared these Wills to be invalid documents.

In view of the above, learned counsel for the appellant argued that the counter-claim filed by the defendants was barred under Order 23 Rule 3A of the Code of Civil Procedure ('CPC' for short) in view of the compromise, on the basis of which earlier judgment Ex.P10 was passed. In support of his contentions, learned counsel for the appellant places reliance on the following judgments: -

1. ***Sri Sri Iswar Gopal Jew and others Vs. Bhagwandas Shaw, AIR 1982 Calcutta 12.***
2. ***Anant Mahadeo Godbole Vs. Achut Ganesh Godbole and others, AIR 1981 Bombay 357 (I).***
3. ***Gopal Lal Vs. Babu Lal, 2004 (4) RCR (Civil) 163 (Rajasthan).***
4. ***Palden Bhutia and others Vs. Januka Chettri and others, 2007 AIR (Sikkim) 15.***
5. ***Devi Sarup and others Vs. Smt. Veena Nirwani and others, 2007 (1) RCR (Civil) 286 (P&H).***

When learned counsel for the appellant was asked to refer to any appeal, which might have been filed by the appellant before the learned first appellate Court against the abovesaid impugned judgment and decree dated 02.02.1993 passed by the learned trial Court, he submitted that plaintiff initially filed only one appeal, which has been dismissed by the learned Additional District Judge vide impugned judgment and decree dated 12.01.2009. However, learned counsel for the appellant further submitted that after dismissal of his

initially filed one appeal by the learned Additional District Judge vide impugned judgment and decree dated 12.01.2009, appellant filed another first appeal against the impugned judgment and decree dated 02.02.1993 of the learned trial Court, whereby counter-claim filed by the defendants was decreed.

Instant appeal is pending at the motion stage for the last more than 08 years, as per the affidavit dated 27.05.2009 of the appellant, at page 10 of the paper book. This appeal was delayed by 37 days in filing. There was also a delay of 293 days in refiling the appeal. Both these applications were disposed of by this Court vide order dated 14.07.2011. Thereafter, numerous adjournments were sought by learned counsel for the appellant. When the case came up for hearing on 14.09.2016, learned counsel for the appellant sought time to apprise this Court about the status of another first appeal filed by the appellant before the learned first appellate Court.

Finally, in compliance of the order dated 27.02.2017 passed by this Court, learned counsel for the appellant placed on record the grounds of appeal dated 15.09.2016, whereby appellant filed his another first appeal before the learned first appellate Court against the abovesaid impugned judgment and decree dated 02.02.1993 passed by the learned trial Court. Thus, the appellant has filed his another first appeal after a long and inordinate delay of more than 24 years. Numerous zimini orders passed by the learned first appellate Court attached as Annexures A-2 to A-7 with CM No.8303-C of 2017 would show that on the one hand, appellant is not taking any interest in his first appeal pending before the learned first appellate Court, whereby abovesaid inordinate and long delay is yet to be condoned and simultaneously repeated adjournments were being sought in the present appeal, on one pretext or the other.

Abovesaid fact situation obtaining on record of the case in hand

apart, appellant has no case either on facts or in law. Admittedly, late Sh. Balwant Singh had two daughters and one son. Firstly appellant sought to grab the share of his sisters with the help of Will dated 29.08.1979, allegedly executed by his father late Sh. Balwant Singh, who himself died on 31.08.1979. He again sought to take shelter of another Will allegedly executed by his mother late Smt. Harbans Kaur in his favour. However, he failed to prove both these Wills and the learned Courts below declared both these Wills to be invalid documents.

Appellant also could not prove himself to be a co-parcener with his father late Sh. Balwant Singh. It is also not in dispute that Smt. Inderjit Kaur, sister of the appellant died unmarried and issueless. Defendants are the legal heirs of his other sister Smt. Ranjit Kaur. In the absence of any Will, the learned trial Court rightly decreed the counter-claim of the defendants, declaring them owners in possession to the extent of one half share of the suit property and appellant was declared owner in possession to the extent of remaining half share of the suit property, partly decreeing his suit for declaration, vide impugned judgment and decree dated 02.02.1993. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their impugned judgments and decrees and the same deserve to be upheld.

So far as the argument raised by learned counsel for the appellant on the basis of Order 23 Rule 3A CPC is concerned, said argument is not even available to him. The reason is simple that the appellant did not challenge the said part of the impugned judgment and decree passed by the learned trial Court, whereby counter-claim of the defendants-respondents was decreed. In this view of the matter, it can be safely concluded that the learned Courts below

committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at his judicious conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned first appellate Court in paras 37 and 38 of the impugned judgment, which deserve to be noticed here, read as under: -

“There is another aspect of the case, the plaintiff/appellant also claims his right, title and interest in the property upto the extent of 3/4th share on the basis of judgment and decree dated 05.01.1987. It is argued by the learned counsel for the plaintiff-appellant that the learned lower Court has erred in holding that the said judgment and decree dated 05.01.1987 is illegal. I have considered this contention of the learned counsel for the plaintiff-appellant and do not find any force in it. The defendants-respondents have challenged the abovesaid judgment and decree dated 05.01.1987 by way of counter claim and as already discussed in para No.22, no appeal has been preferred by the plaintiff-appellant from the counter claim filed by the defendants-respondents, wherein they have challenged the said judgment and decree dated 05.01.1987. The learned trial Court has held under issue No.11 that the judgment and decree dated 05.01.1987 is set aside as opposed to law as alleged in sub para (e) of the counter claim of the defendants-respondents and that the plaintiff-appellant cannot enforce any right on the basis of this decree. Even otherwise, on

merits also, the judgment and decree dated 05.01.1987 is liable to be set aside, as the plaintiff-appellant has himself admitted in his cross-examination while appearing as PW-4 that “he himself had got incorporated in his plaint dated 24.07.1988 that Shri M.M. Mittal and Shri H.S. Paul Advocate by fraud got that decree passed by exercising a fraud upon him.” He has further deposed that “he had stated in his abovesaid plaint that he was compelled to sign his statement in the Court by Shri M.M. Mittal Advocate on the ground that he had no case at all. He had correctly stated that fact.” Thus the plaintiff-appellant is blowing hot and cold. At one point, he says that the judgment and decree is illegal and that his signatures were obtained fraudulently on the blank papers and the Advocates got the decree passed fraudulently and in the same breath, he says that the said decree is legal and valid and cannot be set aside. Thus, I am of the considered opinion that the learned trial Court has rightly held that the plaintiff-appellant himself alleges that this decree be set aside and the defendants-respondents also conceded that it be set aside, then there remains no doubt that why it should not be set aside. The findings of the learned trial Court regarding the said judgment and decree dated 05.01.1987 cannot be said to be erroneous as alleged by the plaintiff-appellant. This is particularly so when the plaintiff-appellant has not filed any cross-objections from the counter claim which has been decided in favour of the defendants-respondents.

In a nutshell, I come to the conclusion that the learned trial Court has rightly decreed the suit of the plaintiff-appellant partly.

The plaintiff-appellant has failed to prove on record the Wills alleged to be executed by Balwant Singh and Harbans Kaur. He has also failed to prove on record the alleged affidavits. The judgment and decree dated 05.01.1987 has also been set aside. Under these circumstances, the plaintiff-appellant has rightly been declared not the absolute owner of the property measuring 111K-01M left behind by Balwant Singh. He has rightly been declared to be owner in possession of the half share of the land mentioned in the head note of the plaint. Since, Harbans Kaur and Inderjit Kaur died intestate, the defendants No.2 to 7 have rightly been declared as owners in possession of the remaining half share being the LRs of Ranjit Kaur daughter of Balwant Singh of the land mentioned in the head note of the plaint. The learned trial Court has rightly held the defendants No.2 to 7 as owners of half share of the properties mentioned in the counter claim and the plaintiff-appellant to be the owner of the remaining half share. The preliminary decree for the partition of the half share each of the plaintiff-appellant and the defendants No.2 to 7 has been rightly passed by the learned trial Court and I do not find any illegality in the judgment and decree passed by the learned trial Court and the same are hereby affirmed by dismissing the present appeal with costs.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments and decrees passed by both the learned Courts below. He also failed to refer to any question of law, much less substantial questions of law enabling this Court to entertain the present appeal, which is sine qua non for entertaining

the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reference can be made to the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

13.07.2017
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No