

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

RSA Nos.4963 of 2010 (O&M)
Date of Decision: August 23, 2017

Jai Dev since deceased through LRs.

...Appellant

Versus

Suresh Kumar and others

...Respondents

RSA No. 4965 of 2010 (O&M)

Suresh Kumar and others

...Appellants

Versus

Jai Dev and others

...Respondents

RSA No. 4981 of 2010

Jai Dev since deceased through LRs.

...Appellants

Versus

Suresh Kumar minor son of ChiranjiLal.

...Respondents

RSA No. 5129 of 2010

Jai Dev since deceased through LRs.

...Appellants

Versus

Pawan Kumar minor son of ChiranjiLal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod S Bhardwaj, Advocate;
for the appellant(s) (in RSA No.4981-2010)
for the appellant(s) (in RSA No.4963-2010)
for the appellant(s) (in RSA No.5129-2010)
for the respondents (in RSA No.4965 of 2010)

Mr. Amit Jain, Advocate,
for the appellants (in RSA No.4965 of2010)
for respondents no.1 to 4 (in RSA No.4981-2010)
for respondents no.1 to 4 (in RSA No.4963-2010)

for respondents no.4 to 7(in RSA No.5129-2010)
Mr. Sharad Aggarwal, Advocate, for
Mr. Lokesh Sinhal, Advocate,
for respondents no.2 to 4 (in RSA No.4965-2010)
for respondents no.5 to 7 (in RSA No.4963-2010)
for respondents no.5 to 7 (in RSA No.4981-2010)
for respondents no.1 to 3 (in RSA No.5129-2010)

ANIL KSHETARPAL, J.

CM-9293-C, 9858-C, 9371-C and 9372-C of 2017.

Allowed, subject to just all exceptions.

Main case:

These four appeals are arising out of a Civil Suit No.118-C/19.07.2000. Hence, the appeals are being disposed of by this common judgment.

Following substantial questions of law arise in the present appeal:-

1. Whether judgement of first Appellate Court is result of misreading of pleadings and evidence available on record with respect to redemption of mortgage ?
2. Whether a consent decree suffered by a sister on the basis of family settlement in favour of a brother who had been given in adoption, can be set aside on the ground that such brother was not the member of the family ?

Rameti daughter of Sh. Hardiyal filed a suit for declaration claiming that she is owner in possession of 1/3 share in agricultural land measuring 215 Kanal 12 Marla, which was earlier owned by Hardiyal, her father. She also challenged the mutation of inheritance. She also claimed

that she has become owner as mortgage has not been redeemed. She also challenged release deed dated 12.04.2001. She further challenged the civil Court decree dated 20.07.1991 suffered by her in favour of Chiranji Lal and Jai Dev.

Detailed facts have been noticed by the Courts below, however, to complete the narrative, some facts are necessary.

Hardiyal was owner of 215 Kanal 12 Marla of land. Name of wife of Hardiyal is Goran Devi, whereas Hardiyal had two sons, namely, Jai Dev and Chiranji Lal and one daughter Rameti/plaintiff.

Jai Dev was given in adoption by Hardiyal to one Sh. Moman son of Kushla vide registered adoption deed dated 04.12.1965. Moman son of Kushla mortgaged the land measuring 125 Kanal 13 Marla in favour of Hardiyal. It was agreed that the land would be redeemed after two crops at any time on repayment of mortgage amount i.e. Rs.2800/-.

Hardiyal died in the year 1978. On the death of Hardiyal mutation of inheritance was sanctioned in favour of Jai Dev (son given in adoption), Goran Devi (widow) and Chiranji Lal (other son).

Chiranji Lal and Jai Dev filed a suit against Rameti for declaration that Rameti in the family settlement had given them 56 Kanal land. Rameti appeared, filed written statement and suffered statement in Court admitting the claim of the plaintiffs. Hence, the suit was decreed on 20.07.1991.

Jai Dev (son given in adoption), Goran Devi and Chiranji Lal transferred 134 Kanal and 05 Marla of land in favour of Pawan Kumar son

of Sh. Chiranji Lal.

Defendant Nos.2, 3 and 4, namely, Pawan Kumar, Goran Devi and Chiranji Lal filed a joint written statement contesting the suit. The factum of adoption of Jai Dev by late Sh. Moman was not disputed. Defendant Nos.2, 3 and 4 further pleaded that the mortgage deed dated 08.08.1961 has already been redeemed by defendant No.1 i.e. Jai Dev and he is in cultivating possession of the same.

A separate written statement was filed by defendant No.1 wherein Jai Dev admitted that he was given in adoption. He pleaded that the mortgage has been redeemed as Smt. Rameti and Goran Devi had given power of attorney to one Balwant Singh.

Learned trial Court held that Jai Dev had been given in adoption, therefore, he was not the son of Hardiyal on the day he died and hence mutation of inheritance with respect to property of Hardiyal in favour of Jai Dev has been wrongly sanctioned. Learned trial Court further held that consequently the decree dated 20.07.1991 is also illegal because Jai Dev was not related to Rameti (plaintiff). Rameti was held owner in possession of 1/3 share being Class I heir of Hardiyal. Learned trial Court further found that the mortgage deed dated 08.08.1961 has been redeemed as Goran Devi and Rameti had executed a power of attorney in favour of Balwant who get the land redeemed and handed over possession to Jai Dev on 01.09.2000. Hence, Jai Dev was declared to be owner of the land, which was earlier under mortgage. The trial Court further held that the release deed dated 12.04.2001 with respect to land measuring 134 Kanal 5 Marla is

illegal being hit by the principle of *lis pendens*.

Three appeals were filed, one by legal heirs of Rameti (plaintiff), second by Jai Dev and third by Pawan Kumar son of Chiranji Lal, Goran Devi and Chiranji Lal. All the three appeals were decided by the first Appellate Court by a single judgement. The first Appellate Court affirmed the finding of the trial Court to the extent that Jai Dev was given in adoption and hence mutation of inheritance in favour of Jai Dev is erroneous. It was held that on adoption, Jai Dev became adopted child of Moman for all intents and purposes and he severed his link with the family of Hardiyal. Therefore, Jai Dev was not entitled to 1/4 share in the estate of his natural father Hardiyal. The Court held that on the death of Hardiyal, plaintiff Rameti, Goran Devi and son Chiranji Lal became owners of 1/3 share each on the demise of Hardiyal.

Learned first Appellate Court, however, further upheld the consent decree on the ground that such decree has been suffered by Rameti with her free will and volition and there is no evidence of fraud. It was noticed by the Court that the advocate who appeared on behalf of Rameti has been examined by the defendants and he had stated that he had read over the contents of plaint and written statement to Rameti who after admitting the correctness of the same had put thumb impressions. The Court further recorded that Rameti had appeared before the Court and made a statement admitting the claim of Jai Dev and Chiranji Lal.

Further, learned first Appellate Court held that redemption of the mortgage deed is not proved. The Court held that since period of limitation for redemption of mortgage has been elapsed, therefore, Rameti,

Chiranji Lal and Goran Devi have become owner of land measuring 125 Kanal 13 Marla. The first Appellate Court further set aside the release deed to the extent of share of Jai Dev on the ground that since Jai Dev was not entitled to inherit the estate of Hardiyal, therefore, Jai Dev could not transfer any portion of the land to Pawan Kumar through release deed dated 12.04.2001.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments of the Courts and record produced by the counsels.

There is no dispute about Jai Dev having been given in adoption to Moman. There is further no dispute about the fact that Moman had mortgaged 125 Kanal 13 Marla of land in favour of Hardiyal for a sum of Rs.2800/-. It is proved on the file that Jai Dev, Goran Devi, Chiranji Lal had executed a transfer deed/release deed in favour of Pawan Kumar son of Chiranji Lal with respect of land measuring 134 Kanal 5 Marla on 12.04.2001.

It is proved on the record by overwhelming evidence that Chiranji Lal and Jai Dev had filed a suit with respect to land measuring 56 Kanal on the basis of family settlement and Rameti had filed written statement and suffered a statement admitting the claim of the plaintiffs in that suit resulting in decree dated 20.07.1991.

Once it is not in dispute that Jai Dev was given in adoption, in the mutation of inheritance, name of Jai Dev could not be included as Jai Dev was not entitled to inherit the estate of Hardiyal. To that extent, the

judgment passed by the learned first Appellate Court is correct. Learned first Appellate Court has further correctly ordered that since Jai Dev was not entitled to inherit any property from Hardiyal, therefore, the release deed executed by Jai Dev to the extent of his share in favour of Pawan Kumar is not valid.

The first Appellate Court has committed illegality while returning the finding that mortgage has not been redeemed. The redemption of mortgage is proved as Goran Devi, Chiranji Lal and Pawan Kumar had admitted the redemption of mortgage in their written statement. Only Rameti had disputed the redemption. Balwant to whom Goran Devi and Rameti had given power of attorney to get the land redeemed, has been examined as DW6 and has proved that the mortgage was redeemed. Still further, it is established from the revenue record brought on the file that it is Jai Dev, who is cultivating the mortgaged land i.e. 125 Kanal 13 Marla. It is not in dispute that the mortgage was with possession. Once Jai Dev is found to be in possession, and there is no allegation that Jai Dev has forcefully entered into possession, the natural consequence that the assertion of Jai Dev which is supported by written statement of Goran Devi, Chiranji Lal and Pawan Kumar and supported by the evidence of Balwant, proves that the mortgage has been redeemed.

Learned first Appellate Court has committed error in setting aside the decree dated 20.07.1991. The decree has been challenged by late Smt. Rameti who had died during the pendency of the suit on the ground of fraud. Smt. Rameti has also challenged the decree on the ground that since

Jai Dev was not the family member after the adoption, therefore, the basis of decree i.e. family settlement did not exist. Hence, the decree is illegal.

I am afraid such reasoning of the first Appellate Court is not correct. The consent decree was passed in favour of Chiranji Lal, the brother of Rameti and Jai Dev. Jai Dev and Chiranji Lal are brothers of Rameti. It is a different fact that Jai Dev was given in adoption. However, once Chiranji Lal and Jai Dev had pleaded in the earlier suit that Rameti had given them 56 Kanal of land in family settlement and Rameti had admitted that fact, the consent decree cannot be set aside merely because Jai Dev had been uprooted from the family of Hardiyal and planted in the family of Moman. The consent decree is passed on the basis of family settlement. Members of family cannot be narrowly construed. Rameti has failed to prove any fraud. Both the Courts have found that no evidence to prove the fraud has been led. Even before me, no meaningful argument on the fraud has been addressed. The lawyer representing Rameti has been examined. The copy of the written statement filed by Rameti is Ex.D11. Further the decree was passed on 20.07.1991. The present suit was filed on 19.07.2000. The suit for declaration challenging the decree could only be filed within a period of 3 years. In view of the overwhelming evidence available on the file, the decree suffered by Rameti cannot be set aside.

In view of the discussion made above, the questions of law framed above, are answered in favour of the appellants.

In view of discussion made above, all the four appeals are disposed of in the following manners:

i) It is held that the mortgage deed dated 08.08.1961 had been redeemed and, therefore, late Sh. Jai Dev is owner in possession.

ii) The consent decree dated 20.07.1991 is held legal and valid and the rights flowing from the decree shall remain in force.

iii) The release deed dated 12.04.2001 is held to be invalid to the extent wherein Jai Dev has transferred some share in favour of Pawan Kumar as Jai Dev only transferred the share inherited from Hardiyal to which he was not entitled to.

iv) Mutation of inheritance of Hardiyal sanctioned in favour of Goran Devi, Chiranji Lal and Jai Dev is set aside only to the extent that Jai Dev was not entitled to inherit the estate of Hardiyal. Hence, the decree of declaration is passed that plaintiff Rameti being daughter is entitled to 1/3 share, of course, subject to transfer of 56 Kanal in favour of Chiranji Lal and Jai Dev subsequently i.e. on 20.07.1991 civil Court decree.

All the four appeals stand disposed of accordingly.

(ANIL KSHETARPAL)
JUDGE

23.08.2017
sk/Parveen Kumar

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