

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 5493 of 2016

Date of Decision: 14.09.2017

Surinder Kaur

.....Appellant

Vs.

The Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. K.L. Kohli, Advocate,
for the appellant.

AMOL RATTAN SINGH, J.

This second appeal has been instituted by the plaintiff who had instituted a suit seeking a declaration that the 'No Objection Certificate' dated 12.11.2009, issued by defendant no.4 (respondent no.4 herein), i.e. the Estate Officer, U.T. Chandigarh, as also the transfer deed dated 17.11.2009 effected in favour of defendants no.6 and 7 (respondents no.6 and 7 herein), qua House No.178, Sector 20-A, Chandigarh, without payment of stamp duty, to the exclusion of other Class-I heirs, including the plaintiff and defendants no.8 and 9, be declared to be “illegal and of no effect”.

She further sought a declaration that she is entitled to succeed to the suit property and was also entitled to partition and possession of her 1/4th share therein, yet further seeking a decree of permanent and mandatory injunction, restraining the aforesaid defendant no.4 (Estate Officer) from entering any “transaction of NOC or transfer of ownership of the suit property” in favour of any other person, other than the Class-I heirs of the

deceased owner of the suit property, i.e. Harsaran Singh father of the plaintiff and defendants no.6 to 8 and grand-father of defendant no.9 (the said defendants being respondents no.6 to 9 respectively, in the present appeal also).

A decree of permanent and mandatory injunction was further sought restraining defendant no.5, i.e. the Sub-Registrar, U.T. Chandigarh, from registering any document “evidencing transfer of ownership” of the suit property in favour of any other person, other than all Class-I heirs of the deceased Harsaran Singh, as also restraining defendant no.6 and 7, i.e. the plaintiffs' brothers, from alienating the suit property in any manner, by way of transfer, sale, mortgage, lease etc.

2. Her suit having been dismissed by the learned Civil Judge (Junior Division), Chandigarh, on 30.05.2015 and the first appeal filed by her also having been dismissed by the learned Additional District Judge, Chandigarh, vide his judgment and decree dated 03.08.2016, this second appeal has come to be instituted by the plaintiff.

3. The facts set up by the plaintiff in her suit are being taken from the judgments of the learned Courts below.

As per the plaintiff, she and defendants no.6 to 9 are Class-I legal heirs of the aforesaid Harsaran Singh, qua the suit property, as per the Schedule to the Hindu Succession Act, 1956.

Harsaran Singh was stated to have contracted “old age diseases”, including a heart disease, due to which he remained admitted in the intensive care centre of the Government Medical College and Hospital, and therefore was influenced by defendants no.6 and 7, i.e. his sons (brothers of the plaintiff), with whom he lived, Harsaran Singh's wife having died earlier.

The contention of the plaintiff further was that her father was not in a sound disposing mind on the date that he applied for issuance of a 'No Objection Certificate', (on 29.10.2009), seeking transfer of his house.

As per the plaintiff, the certificate was issued to him between 12.11.2009 and 17.11.2009, after which he executed a registered transfer deed, without payment of stamp duty, "on or about 07.12.2009", with actually defendants no.6 and 7 having applied for such transfer to defendant no.4, i.e. the Estate officer, U.T. Chandigarh.

4. The plaintiffs' stand in her suit was that the transaction of transfer of ownership of a property, in terms of the order dated 07.06.2007 issued by the Chandigarh Administration, could only be made without stamp duty if the property was transferred to all Class-I legal heirs of the transferor and therefore, with the transfer of the suit property having been made to only defendants no.6 and 7 and not to the other Class-I legal heirs, i.e. the plaintiff and defendants no.8 and 9, the transaction itself, i.e. the transfer deed, was null and void.

5. It was further contended that to enter into the said transaction and for obtaining a 'No Objection Certificate', the requirement of obtaining a completion certificate was gone through hurriedly, and further, after the execution of the transfer deed dated 17.11.2009, it was entered in the records of the 4th defendant (Estate Officer), on 13.01.2010, after which the deceased died on 19.01.2010, which is an extremely suspicious circumstance. The plaintiff further contended that the 'additional suspicious circumstance' was that in the transfer deed it was not mentioned that respondents no.6 and 7 were Class-I legal heirs of the transferor, which was a legal requirement for claiming exemption from payment of stamp duty. Instead, it was stated that

the transfer was being made on the basis of “natural love and affection”, which according to the plaintiff is “outside the scope of the said exemption”.

Still further, it was contended that instead of submitting a photograph of a family specified as Class-I legal heirs, a family photograph of only defendants no.6 and 7 was submitted to the Estate Officer, which also was a suspicious circumstance and was against the provision for making a transfer in the name of Class-I legal heirs.

6. Upon notice issued in the suit, the Union of India and Chandigarh Administration, as also its functionaries (excluding the Sub-Registrar-defendant no.5), filed a jointed written statement on behalf of the first four defendants, stating therein that the residential plot on which the house stood constructed, was initially allotted to one Smt. Tara Vati vide an allotment letter dated 25.11.1960, on free hold basis. Subsequently, the property was transferred to the father of the parties, i.e. Harsaran Singh, vide a transfer letter dated 28.06.1966, which was issued on the basis of a sale deed having been effected between Tari Vati and Harsaran Singh.

The factum of Harsaran Singh having applied for an 'NOC' for transfer of the suit property in favour of his sons, Kanwaljeet Singh and Tejinderpal Singh, i.e. defendants no.6 and 7, on 29.10.2009, was also admitted by the 'official defendants'.

As per the said defendants, the 'NOC' for transfer of property was issued after following due process of law and eventually the transfer deed was executed by Harsaran Singh on 17.11.2009.

7. Importantly, it has been recorded in the impugned judgment of the learned Civil Judge (Junior Division), Chandigarh, that as per the stand of the defendants in their written statement, the notification dated 14.06.2007

was applicable when the owner of a property transferred it to his “relatives” mentioned in Class-I of the Schedule, as also Entry-I of Class-II of the Schedule to the Hindu Succession Act, 1956, with the notification being applicable in the entire U.T., Chandigarh.

All in all, the stand of the defendants in the written statement was to the effect that the transfer was properly made and that no stamp duty was required for such transfer by the transferor to his two sons, and that there was no requirement contained in the notification dated 14.06.2007, that the transaction of transfer of property must be in favour of all the legal heirs of the transferor, for the exemption from stamp duty to become applicable.

8. Yet further, as per defendants no.1 to 4, the property as per the record of the Estate Office, was a self-acquired property of Harsaran Singh and was therefore transferred in terms of the aforesaid notification.

9. Defendants no.6 and 7, i.e. the brothers of the plaintiff, filed two separate written statements taking the same stand as each other. They gave the background of the purchase of the plot by their father and effectively reiterated what was stated in the reply of the Chandigarh Administration.

Additionally, it was stated that defendants no.6 and 7 were the sons of Harsaran Singh, with their father having transferred the property in his own life time to them, and that the documents presented before the officials of the office of the 4th defendant, duly bore the signature of their father, attested before the Executive Magistrate, by Harsaran Singh in person.

Therefore, naturally, the stand of defendants no.6 and 7 was that the property having been legally transferred to them, the suit was to be dismissed.

10. Defendant no.8, i.e. the daughter of the sister of the plaintiff

(grand-daughter of the late Harsaran Singh) also filed a written statement, whereby she admitted the claim of the plaintiff, stating that the suit may be decreed and a 1/4th share of the suit property be given to her and her brother, i.e. defendant no.9, by partition thereof, by metes and bounds.

11. Replications are also stated to have been filed by the plaintiff to the written statements filed on behalf of respondents no.1 to 7.

The following issues were thereafter framed by the learned Civil Judge, defendant no.5 (the Sub Registrar), having been proceeded against *ex parte*:-

- “1. Whether plaintiff is entitled to the relief of declaration as prayed for? OPP
2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPP
3. Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for? OPP
4. Whether the present suit is not maintainable? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Whether the plaintiff has no locus standi to file the present suit? OPD
7. Relief.”

12. The plaintiff examined herself and five other witnesses, further leading various documents in evidence, including of course the notifications dated 07/14.06.2007 as Exs.P1 and P2 respectively, as also the transfer deed, the allotment letter, the sale deed in favour of her father, dated 07.04.1966.

The defendants, on the other hand, examined defendants no.6 and 7 as DWs1 and 2, and by way of documentary evidence, they too placed on record the sale deed dated 07.04.1966 in favour of their father, the 'NOC'

issued to the father, the indemnity bond, and other documents related to the transfer.

13. Having considered the pleadings and the evidence, the learned Civil Judge observed that the primary ground of challenge of the plaintiff was that the transfer deed dated 17.11.2009 (Ex.PW5/1), was an illegally executed document, with the exemption of stamp duty only available where a suit property was transferred in favour of all legal heirs of the transferors.

The learned Civil Judge also noticed in his judgment that the plaintiff in her cross-examination admitted that the suit property was the self-acquired property of her father.

Hence, as regards the fathers' right to transfer the suit property, it was held by the trial Court that there was no hindrance in his doing so, the property not being ancestral in nature.

14. On the issue of the gazette notification dated 07.06.2007, published on 14.06.2007 (Ex.P1), that Court came to the conclusion, upon a perusal of the said notification, that it was not required that the transfer must be effected in favour of all Class-I legal heirs, for the exemption on the stamp duty to apply to such transfer.

All that was found to be required was that, as per the proviso to the notification, the registering officer was to ensure that the relationship of the transferor with the person to whom he was transferring the property, was duly established.

It was thereafter noticed in the judgment that it was specifically stated in the transfer deed that the “transferees are the real son of the transferor” for whom the latter had great love and affection and had consequently decided to transfer “100% share” in the free hold residential

property to the transferees, i.e. his sons.

15. It was further found by the learned Civil Judge that there was no evidence on record that any kind of undue influence, force or coercion was exercised by defendants no.6 and 7 on their father, to execute the transfer deed, even though the plaintiff had “made a faint and half hearted attempt to prove the aforesaid factum by pleading the fact that deceased Shri Harsaran Singh remained hospitalized for a certain period and was not in a fit state of mind”.

The plaintiff had also examined PW4 Tarlok Nath, an official from the Government Hospital where Harsaran Singh remained admitted, with the said official having testified that the said patient first remained admitted in the hospital from 18.12.2008 to 22.12.2008 and thereafter on 06.10.2009, and yet again on 18.12.2009.

16. The trial Court came to a finding that simply the admission of Harsaran Singh to hospital on the aforesaid dates, did not prove that he was not a fit state of mind to enter into any kind of transaction, and moreover, the aforesaid witness merely being a Clerk from the Hospital, with no doctor examined to state that Harsaran Singh was not in a fit state of mind, that plea of the plaintiff remained unsubstantiated.

17. Thus, the primary issues no.1 to 3 were decided in favour of the defendants and against the plaintiff, with issues no.4 to 6, on maintainability of the suit, locus of the plaintiff and her cause of action not having been pressed by the defendants.

The suit of the plaintiff was consequently dismissed by the learned Civil Judge (Junior Division), Chandigarh, vide his impugned judgment.

18. The plaintiff having filed a first appeal, it was heard by the learned Additional District Judge, Chandigarh, who, after noticing the pleadings, the issues framed and the evidence led by the parties, also came to the same conclusion as had the learned Civil Judge, thereby dismissing the appeal, with no other reasoning given than the one already given by the learned trial Court.

19. Before this court, when this appeal initially came up for hearing on 22.10.2016, the records of the Courts below had been directed to be summoned, to determine the medical condition of the transferor, Harsaran Singh, (this Court not being in agreement, at all, with the argument raised that the transfer deed was invalid on account of insufficient stamp duty).

In the meanwhile, alienation of the suit property had been ordered to be stayed.

20. The matter having been adjourned on request of learned counsel for a couple of dates thereafter, when it came up for hearing on 22.12.2016, this Court had categorically rejected the argument of Mr. Kohli, learned counsel for the appellant-plaintiff, with regard to the issue on the stamp duty being insufficient in terms of the notification dated 07/14.06.2007 (Ex.P1).

However, learned counsel having sought time to inspect the diary that had been summoned, as part of the original record, the matter had been adjourned only on that issue, i.e. to determine from the said diary the state of mind of the transferor at the time of execution of the transfer deed, or immediately prior thereto.

21. Thus, the first argument of the plaintiff having already been rejected by a detailed order of this Court dated 22.12.2016, the entire order is being reproduced hereinafter, there obviously being a need for continuity as

regards the arguments of learned counsel and the consideration thereof by this Court.

The said order reads as follows:-

“This Court, on 22.10.2016, had heard the learned counsel for the appellant at length on the issue of the notification issued by the Chandigarh Administration (respondent no.2), with regard to exemption from stamp duty, where a property is transferred to a Class I heir by the transferor.

In fact, this Court was in the process of dictating a detailed order on that aspect, when the learned counsel had sought an adjournment to argue the matter on merits, as regards the state of mind of the transferor of the suit property, i.e. Harsaran Singh, on the date that he had made his transfer. The matter had been thereafter adjourned twice.

Today, Mr. Kohli, learned counsel states that he may reiterate the first argument also with regard to the notification.

That contention is rejected for the reasons recorded hereinafter.

Learned counsel for the appellant had submitted that as per the notification issued by the respondent-Administration, a transaction by which immovable property is transferred to Class I heirs of the transferor, as are specified in the schedule to the Hindu Succession Act, 1956, shall be exempted from stamp duty.

The argument therefore, is that since the transfer in question, of the suit property, was made only to the sons of the transferor and not to the daughters who are also Class I heirs as per the said schedule, the stamp duty was bound to be charged from the sons, i.e. respondents no.6, 7 and 9.

In other words, it is argued that the notification for exemption would take effect only if the property in question is transferred to all Class I heirs of the transferor and not if it is transferred only to some of them. The argument is rejected outright, in view of the fact that the notification, which is reproduced hereinafter, does not specify anything to that effect:-

“In the exercise of the powers conferred by clause (a) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (Central Act

No.2 of 1899), and all other powers enabling him in this behalf, the Administrator, Union Territory, Chandigarh is pleased to remit with effect from the date of publication of this Order in the official Gazette, the stamp duty chargeable in case of transaction of transfer by an owner of a property to the relatives mentioned in Class-1 and in Entry/Category 1 of Class II of the Schedule attached to the Hindu Succession Act, 1956 (30 of 1956) in the whole of Union Territory, Chandigarh.

Explanation:- The remission shall be applicable to the property owned by any person and the reference to the Hindu Succession Act, 1956 is only for the purpose of specifying the relatives.

Provided further that the Registering Officers shall ensure that the factum of relation of the transferor with the person to whom the property is transferred, is fully described in the transfer deed so that the transferor is duly made liable for concealment of facts, if any.”

A perusal of the aforesaid notification shows that the stamp duty is exempted in the case of a transfer of an immovable property from a transferor to his Class I heirs and a particular category of Class II heirs.

The implication by no stretch of imagination, in the opinion of this Court also, as also held by the Courts below, can be that the stamp duty is to be exempted only if the transfer is made in respect of all Class I heirs, and shall not be applicable if it is made only to some of the Class I heirs of the transferor. Hence that argument is rejected.

The next argument raised by the learned counsel for the appellant is that the notification itself was issued by an incompetent authority, in terms of Section 9 of the Indian Stamp Act, 1899, which reads as under:-

“9. Power to reduce, remit or compound duties.-

(1) The Government may, by rule or order published in the Official Gazette,-

a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of

persons or by or in favour of any members of such class, are chargeable, and

b) provide for the composition or consolidation of duties of policies of insurance and in the case of issues by any incorporated company or other body corporate or of transfers (where there is a single transferee, whether incorporated or not) of debentures, bonds or other marketable securities.

[(2) In this section, the expression “the Government” means, -

(a) in relation to stamp-duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, and in relation to any other stamp-duty chargeable under this Act and falling within entry 96 of List 1 in the [Seventh Schedule to the Constitutions, except the

subject matters referred to in clause (b) of sub-section (1)];

(b) save as aforesaid the Stage Government.]”

The argument is that the Administration of the U.T., Chandigarh, not falling within the definition of “Government”, the Government for the Union Territory of Chandigarh being only the Central Government, the notification is invalid.

A perusal of the plaint filed by the appellant-plaintiff, which has been very fairly produced in Court by the learned counsel for the appellant, shows that the relief claimed in the suit, was a declaration that the transaction of the issuance of a 'no objection certificate' on 12.11.2009, by defendant no.4, i.e. the Estate Officer, U.T., Chandigarh, and the transfer deed dated 17.11.2009 thereafter, in respect of the suit property, which is a house situated in Sector-20A, Chandigarh, in favour of respondents-defendants no.6 and 7, to the exclusion of the other Class I heirs, including the plaintiff and defendants no.8 and 9, are illegal transactions and that the plaintiff is entitled to possession of the suit property after partition thereof to the extent of his 1/4th share therein.

Further, a decree of permanent and mandatory injunction was also prayed for, restraining the aforesaid defendant no.4 from entering into any transaction of an 'NOC' or transfer of ownership of the suit

property in favour of any person other than all Class I heirs of the deceased owner, (Harsaran Singh) and still further, seeking an injunction against defendant no.5, i.e. the Sub-Registrar, U.T., Chandigarh, from registering any document evidencing transfer of ownership of the suit property in favour of any person other than all Class I heirs of the deceased Harsaran Singh and yet further, restraining defendants no.6 and 7, i.e. the brothers of the appellant-plaintiff, from alienating the suit property in any manner by way of transfer, sale, mortgage or lease etc.

Hence, the notification itself, under which the transaction was made free of stamp duty (which notification is shown to have been issued under Section 9 of the Act of 1956), was never under challenge; only the effect thereof was sought to be interpreted in the manner now again argued before this Court by the learned counsel, to the effect that stamp duty must be paid unless the suit property is transferred to all Class I legal heirs of the transferor.

Consequently, the notification itself never having been under challenge, without going into the question of any such challenge being maintainable before a civil Court, such a plea cannot be taken at the stage of the second appeal.

Learned counsel has still further sought to argue that by Section 9 of the Act of 1956, daughters/females who are Class I legal heirs, have not been excluded and as such they too are beneficiaries of any reduction/exemption from stamp duty in terms of any notification issued under Section 9.

The argument is absolutely correct, as there can be no discrimination in that regard, on the basis of the sex or gender of the transferee.

However, the aforesaid argument is actually being made, in the present context, in pursuance of the first argument raised, to the effect that if the daughters are excluded from a particular transfer by the transferor, the stamp duty cannot be stated to be exempted in the case of a transfer to a son.

At this stage, learned counsel has argued that if the transfer is made in favour of the daughters, only then the exemption from stamp

duty can be held to be valid. Subsequently, he has again argued that both are equally exempted, but only if the transfer is made qua all legal heirs as are living and fall within the definition of Class I legal heirs.

The argument is again rejected, for the same reason as already given hereinabove.

As regards the issue on the state of mind of the transferor to execute a valid transfer or not, Mr. Kohli seeks time to inspect the diary that had been summoned vide order dated 09.12.2016, as exhibited before the Courts below, and thereafter to address arguments.

Adjourned to 16.03.2017, for arguments on that issue and other issues (other than with regard to the applicability of stamp duty, that contention having been specifically rejected by this Court).”

22. The roster having changed, the matter went before different Benches on 16.03.2017 and 12.07.2017, on which date it was ordered to be put up before this Bench, the argument on insufficiency of stamp duty already having been rejected by me.

23. Today, learned counsel for the appellant has submitted, after pointing to the Diary, Ex. D-10 (which is actually seen to be of the year 2003, but with handwritten dates of the years 2008, 2009 and 2010 in it), that the late father of the appellant and respondents no. 6 and 7 was not in a correct frame of mind, as though he was meticulously noting down all expenses paid, he did not note down the expense paid by him on the stamp papers purchased by him for executing the transfer deed dated 17.11.2009 and also on the registration and on obtaining the NOC to do so.

He further points to the fact that in the diary noting dated 22.12.2009, i.e. about 26 days before his death, Harsaran Singh duly noted that the appellant-plaintiff (one of his daughters) came to visit “the home” upon which he paid Rs. 5,000/-.

Learned counsel submits that the word used in Punjabi is “*Ghar Aayee*” which would denote that she came to her parental home, which would mean her fathers' home and as such, as per learned counsel, the father was still under the impression that the house was his own, even though the transfer deed dated 17.11.2009 had been executed by which he had transferred it to his sons.

24. The contention is rejected, in view of the fact that even if a father transfers a house in his old age to his children, but continues living in it, he would still refer to it as his home, because the transfer is obviously made looking at his age, not because he no longer treats it as his home.

Hence, if even though technically it would not remain his house, he would still refer to it as his home.

25. Mr. Kohli further submits that a few days before his death in January 2010, Harsaran Singh referred to him having given Rs. 200/- “*Allah Samart*”, which learned counsel submits is against his character, as all other money paid for religious purposes has been referred to as paid by him to the Gurudwara, and therefore, he having referred to the aforesaid payment of Rs. 200/- as “*Allah Samart*”, he was not in fully control of his census.

In the opinion of this Court, anybody's state of mind as regards his spiritual orientation at any particular point of time especially towards his last days, would not go to show that he had lost control of his mind, or that he was not aware what his was doing, especially as he duly noted the payment of Rs. 200/- that he had made in the diary.

Thus, whether he stated that the money was dedicated to “*Allah*” or the “*Gurudwara*” etc., would make absolutely no difference, in my opinion.

26. Mr. Kohli yet further submits that the earlier submission made by him with regard to the notification (as recorded in the order dated 22.12.2016), has not been noticed by this Court today.

Whereas that is actually a fact because that contention was already rejected in the order dated 22.12.2016, the order that has been dictated in Court today is only with reference to learned counsels' arguments of today, with the order dated 22.12.2016 incorporated *ad verbatim* in the judgment.

With the aforesaid, this appeal is dismissed.

No order as to costs.

September 14, 2017
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes