

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1436 of 1992 (O&M)

Date of Order:23rd January, 2018

Lachhmi Parkash and another

..Appellants

Versus

Ajit Kaur

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L.Saggar, Sr. Advocate, with
Mr. Jatinder Nagpal, Advocate,
for the appellants.

Mr. Arun Jain, Sr. Advocate, with
Mr. Manvir Singh Rana, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

By this judgment, Regular Second Appeal Nos.1436 of 1992, 1902 and 2110 of 1996 are being decided as the facts are interconnected and property in dispute and the parties involved are common in all the three appeals.

Regular Second Appeal No.1902 and 2110 of 1996 arise out of a suit filed by Rajiv Kumar, appellant in RSA No.1902 of 1996, whereas Regular Second Appeal No.1436 of 1992 is arising out of a suit for permanent injunction with regard to the property, which is subject matter of Regular Second Appeal No.1902 of 1996.

FACTS:-

Harcharan Dass Batta was the owner of sufficient landed property. He divided the property on 28.05.1953 amongst his family members. He kept 1/3rd share of the property for himself, 1/3 was fell to the share of Parwati Devi, wife, and 1/3rd was fell to the share of Lachhmi

Parkash (son), who suffered a consent decree in favour of his wife Sulakshna Devi, declaring that 1/3rd property, received from Harcharan Dass Batta is owned and possessed by her. Harcharan Dass Batta died in 1970 and on the basis of testamentary succession, 1/3rd share of the entire property retained by Harcharan Dass Batta was mutated in favour of Lachhmi Parkash (son). Sulakshna Devi suffered a decree with respect to the property which she had received from her husband Lachhmi Parkash in favour of her father Shri Ranbir Singh Puri, vide decree dated 09.02.1972. Rajiv, the plaintiff was born on 07.10.1969.

Parwati died on 11.06.1978 and the property which had fell to her share pursuant to the the partition of the property in the year 1959, was mutated equally in favour of Lachhmi Parkash(son) and Ram Piyari (daughter). Thus, Lachhmi Parkash became owner of ½ share in the property as he had received 1/3rd share through a testamentary succession from Harcharan Dass Batta and 1/6th share on death of his mother Parwati.

Rajiv, the plaintiff-appellant in RSA No.1902 of 1996, filed a suit against his father Lachhmi Parkash, his mother Sulakshna and Sh. Ranbir Singh Puri, his maternal grand father. He challenged civil court decrees dated 16.10.1969 suffered by Lachhmi Parkash in favour of his wife Sulakshna Devi and decree suffered by Sulakshna Devi in favour of Sh. Ranbir Singh Puri, dated 09.02.1972. Certain sale deeds executed by Sh. Ranbir Singh Puri were also challenged.

The suit filed by Rajiv the plaintiff-appellant came to be decreed on 03.11.1978, setting aside the judgments and decrees dated 16.10.1969, 09.02.1972 and the sale deeds executed by Sh. Ranbir Singh Puri.

Lachhmi Parkash executed the following registered sale deeds in favour of Amarjit Singh, the appellant in RSA No.2110 of 1996:-

- “(a) Sale deed No.454 dated 18.05.1983 regarding land measuring 4 bighas and 5 biswas and corrected sale deed no.505.
- (b) Sale deed No.601 dated 25.05.1983 regarding land measuring 5 bighas and 15 biswas;
- (c) Sale deed No.706 dated 31.05.1983 regarding land measuring 5 bighas and 7 biswas;
- (d) Sale deed No.504 dated 21.05.1984 regarding land measuring 5 bighas and 0 biswa.”

Similarly, Sulakshna Devi also executed the following registered sale deeds in favour of Ajit Kaur:-

- (e) “Sale Deed No.1008 dated 10.06.1983 regarding land measuring 5 bighas and 0 biswa;
- (f) Sale deed No.1105 dated 16.06.1983 regarding land measuring 5 bighas and 5 biswas.”

Ajit Kaur wife of Amarjit Singh filed a suit for permanent injunction against Lachhmi Parkash and Sulakshna Devi praying for a decree of injunction restraining the defendants from interfering in the possession with respect to the land purchased by her from Sulakshna Devi and forcibly dispossessing her from the land in dispute and also interfering in any manner in the use of electric motor attached to the above land to the extent of 1/3rd share.

Rajiv Kumar filed a fresh suit on 25.09.1986 (current suit for which these Regular Second Appeals have arisen) claiming that he is owner

of 119 bighas and 9 biswas and also sought declaration that sale deeds executed by Lachhmi Parkash in favour of Amarjit Singh, details whereof have been given above and subsequent sale deeds executed by Amarjit Singh in favour of remaining defendants as also sale deeds executed by Smt. Sulakshna in favour of Ajit Kaur, details whereof have been given above.

Plaintiff Rajiv Kumar claimed that such sale deeds are null and void and inoperative qua the right of the plaintiff. Plaintiff also sought a consequential relief of a decree for possession of entire land sold and further prayed that the entries in the revenue record be corrected in his favour. Rajiv Kumar was a minor when suit was instituted hence filed suit through his brother-in-law Sh. Arun Kumar Sagar.

The suit was decreed by the trial court after returning a finding that the property is Joint Hindu Family property and sale deeds executed are without legal necessity vide judgment and decree dated 25.04.1990.

Amarjit Singh and Ajit Kaur filed appeals challenging the judgment and decree passed by the learned trial Court.

Learned first appellate Court after discussing the evidence, once again returned a finding of fact that Lachhmi Parkash was owner of $\frac{1}{2}$ share in the entire property after having received through a testamentary succession from Harcharan Dass Batta, his father and $\frac{1}{6}$ th share from his mother Parwati, hence sale deeds executed by Lachhmi Parkash were legal and valid as the property was exclusive property of Lachhmi Parkash. However, first appellate Court declared that the sale deeds executed by Sulakshna in favour of Ajit Kaur in the year 1983 were not valid as Sulakshna Devi was not the owner of the property, once she suffered decree in favour of her father Ranbir Singh Puri on 09.02.1972 and later on as per

decree dated 03.11.1978, Rajiv was declared to be owner of the property. The Court held that even if the decree dated 03.11.1978 had not been given effect to in the revenue record, however, a decree passed is valid and final and hence has to be given effect to in the revenue record.

I have heard learned senior counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below in all the three appeals.

Learned counsel for Amarjit Singh and Ajit Kaur has submitted that once the property was partitioned by Harcharan Dass Batta in 1959, thereafter the property was exclusive property of Lachhmi Parkash and Sulakshna and the Joint Hindu Family property ceased to be exist. Learned counsel further submitted that 1/3rd share of the property had fallen to the share of Parwati in the partition dated 25.05.1959 and, therefore, the property which fell to the share of mother cannot be co-parcenary. He further submitted that since the decree passed on 03.11.1978, has never been implemented in the revenue record, therefore, sale deeds executed in favour of his clients, namely Amarjit Singh and Ajit Kaur were valid.

On the other hand, learned senior counsel for Rajiv Kumar has submitted that judgments and decrees passed by the Civil Court on 16.10.1969 and 09.02.1972 had been set aside, Rajiv Kumar was declared owner of the property. He further submitted that Smt. Sulakshna Devi have no right to sell the property.

No doubt, once Harcharan Dass Batta, had divided the properties amongst the family members, Joint Hindu Family, if any, ceased to exist. The property was divided and hence co-parcenary, if any, also ceased to exist. After division of the property in 1959, properties become

exclusive properties of various members of the family. Thereafter, the family members have been suffering decree against each other repeatedly with a view to save the property from ceiling on the land holding. Hence, in the considered opinion of this Court, the property was neither Joint Hindu Family nor coparcenary nor ancestral.

Second argument of learned counsel that the mother's property cannot be a coparcenary property and the property which came from Parwati to Lachhmi Parkash was also not a coparcenary property, is correct.

However, third argument of learned counsel that the judgment and decree dated 03.11.1978 declaring Rajiv Kumar to be owner and setting aside judgment and decree dated 16.10.1969 suffered by Lachhmi Parkash in favour of Sulakshna Devi and decree dated 09.02.1972 declaring Ranbir Singh Puri as owner of the property have been set aside, but the judgment and decree dated 03.11.1978 has never been implemented, in the revenue record hence having become redundant.

The aforesaid judgment and decree dated 03.10.1978 is legal, valid and become final between the parties. Merely because a judgment and decree for declaration has not been implemented in the revenue record, would not render such judgment and decree redundant. Entry in the revenue record is made only for fiscal purpose and entry of the name in the ownership column or deletion thereof does not have any effect on the ownership. It is the duty of the revenue authorities to update the revenue record. However, revenue record are not records of rights. Of course, revenue record is evidence of title with respect to agriculture land and property situated in the villages.

Learned first appellate Court has rightly concluded that

Lachhmi Parkash was owner to the extent of ½ share of the total property and the sale deeds executed by him in favour of Amarjit Singh were within his share. Since the property in the hands of Lachhmi Parkash was his individual property and therefore, Rajiv Kumar neither had any locus standi nor sale deeds could be set aside at the behest of Rajiv Kumar on the ground that sale deeds were without legal necessity. Sale deeds executed by Lachhmi Parkash in favour of Amarjit Singh, extracted above(supra) were all out of the joint land.

On the other hand, learned counsel for Rajiv Kumar in RSA No.1902 of 1996 has submitted that the Court has wrongly reversed the judgment of the trial court and upheld the sale deeds executed by Lachhmi Parkash in favour of Amarjit Singh. However, as discussed above, after the division of the property in the year 1959, the share of the properties which fell to the share of individual member became his or her exclusive property and, therefore, such family members were entitled to sell. Such individual property having been sold through registered sale deeds could not be challenged by Rajiv Kumar on the ground that the property was Joint Hindu Family coparcenary property and the sale deeds were executed without legal necessity.

Learned counsel for the appellant in RSA No.2110 of 1996 has further submitted that the sale deeds executed by sulakshna Devi in favour of Ajit Kaur, extracted above(supra) were for due consideration and Ajit Kaur was a bonafide purchaser. He submitted that since the family of Lachhmi Parkash had colluded amongst themselves and were getting various judgments and decrees passed, therefore, sale in favour of Ajit Kaur could not be declared to be not binding on the rights of Rajiv Kumar as the

judgment and decree dated 03.11.1978 had not been implemented in the revenue record.

From the facts discussed above, it is clear that Smt. Sulakshna Devi was not the owner of any part of the property in dispute after 09.02.1972. Once she was not owner of any part of the property, she could not transfer any right, title or interest in favour of Ajit Kaur.

In view thereof, there is no error in the judgment and decree passed by the learned first appellate Court, which is upheld, while dismissing the Regular Second Appeal Nos.1902 ad 2110 of 1996.

In RSA No.1436 of 1992, Ajit Kaur had filed a suit for permanent injunction against Lachhmi Parkash and Smt. Sulakshna Devi claiming permanent injunction with respect to the land purchased by her vide the sale deeds extracted above.

After discussion, it has been found that sale deeds in favour of Ajit Kaur were not valid, therefore, the suit filed by Ajit Kaur has to be disposed of with the directions that the owner shall be entitled to dispossess her from the land covered by the sale deeds extracted above, in accordance with law. However, Ajit Kaur shall not be dispossessed forcibly except in accordance with law.

Resultantly, Regular Second Appeal Nos.1902 and 2110 of 1996 are dismissed, whereas RSA No.1436 of 1992 is disposed of in view of the observations made above in the foregoing paragraphs.

23rd January, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No