

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

RSA No.30 of 1989 (O&M)
Date of decision : 23.01.2018

Udhi

...Appellant

Versus

Shiv Singh @ Sarwan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Akshit Chaudhary, Advocate for the appellant.

Mr. Umesh Aggarwal, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

The plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the learned Additional District Judge, Jalandhar dated 30.09.1988.

In the considered opinion of this Court, following questions of law arise in the present case:-

1. Whether a widow, who is provided with usufruct of some part of land during her lifetime without giving any right of succession, is entitled to claim that right given to her in the testamentary document has enlarged into the full ownership in terms of Section 14(1) of the Hindu Succession Act, 1956?
2. Whether in the absence of the pleadings of the previous suit, having

been brought on the file, whether the Court is justified in returning a finding that the subsequent suit is barred under Order 2 Rule 2 CPC?

The undisputed facts are that the dispute is with regard to the estate of Chanda Singh. He executed a testamentary document dated 22.07.1960. As per the testamentary document, he bequeathed his entire property in favour of three sons but also recorded that if on his death, his widow is alive then she will be entitled to usufruct of the 1/4th share of the property, during her lifetime.

The plaintiff-appellant, widow of the testator (Chanda Singh) of the Will had filed the present suit for declaration claiming that she is owner in possession of 1/4th share of the estate left by Chanda Singh on the basis of the Will dated 22.07.1960 and 1/4th share of the estate of Arjan Singh, brother of Chanda Singh on the basis of the registered gift deed dated 03.05.1966. She also prayed for grant of injunction. It was the case of the plaintiff that as per the registered Will, 1/4th share was given for her maintenance for life and such right has enlarged into the full ownership under Section 14(1) of the Hindu Succession Act, 1956. The suit was filed by the plaintiff against her sons. The defendant Nos.2 and 3 filed the written statement supporting the plaintiff, whereas defendant No.1 contested the suit.

Learned trial Court decreed the suit, whereas learned First Appellate Court has reversed the judgment passed by the learned trial Court.

Now the stage is set for discussing the questions of law.

1. Whether a widow, who is provided with usufruct of some part of the land during her lifetime without giving any right of succession, is entitled to claim that right given to her in the testamentary document has enlarged into the full ownership in terms of Section 14(1) of the Hindu Succession Act, 1956?

A careful reading of the Will “Testamentary Document” dated 22.07.1960 would prove that Late Sh. Chanda Singh had specifically mentioned in the Will that the entire property is being bequeathed in favour of the three sons, the defendants equally. In the later part of the Will, it is mentioned that if his widow-Udhi is alive at the time of his death, Udhi would be entitled to usufruct of the 1/4th share of the property. In the considered opinion of this Court, such Will cannot be said to be giving even limited estate to the plaintiff-appellant. The Will is only providing for usufruct of the 1/4th share of the estate left by Chanda Singh.

Still further, as per the provisions of Section 14(2) of the Hindu Succession Act, 1956, if a female Hindu acquires the property by way of a gift or under a Will or any other instrument or under a decree or an order of the Civil Court or under an award and the terms of such gift, Will or other instrument or decree, order or award prescribes a restricted estate to such property, the rights of the female shall not get enlarged. Section 14 of the Hindu Succession Act, 1956 is extracted as under:-

“14. Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation.—In this sub-section,

“property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

A careful reading of Section 14 of the Act would prove that Section 14 has been divided into two parts. Sub-Section 1 of Section 14 provides that female Hindu in possession of a property whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. Whereas Sub-Section 2 is in the nature of exception to Sub-Section 1 which exclude the property received by a female Hindu by way of gift or under a Will or any other instrument or under a decree or order of the Civil Court or under an award where terms of such document prescribed a restricted estate in such property.

Hon'ble the Supreme Court in the judgment *Sadhu Singh Vs. Gurdwara Sahib Narike & ors. (2006) 8 SCC 75*, has held that if the testamentary document is executed by an absolute owner, then any testamentary document providing for a limited estate in favour of the

female Hindu would not enlarge into the full ownership. Hon'ble the Supreme Court while deciding the case has considered the judgment passed in *V. Tulasamma Vs. V. Shesha Reddi*, (1977) 3 SCR 261 and other judgments of the Supreme Court. The relevant part of the judgment is extracted as under:-

“13. An owner of property has normally the right to deal with that property including the right to devise or bequeath the property. He could thus dispose it of by a testament. Section 30 of the Act, not only does not curtail or affect this right, it actually reaffirms that right. Thus, a Hindu male could testamentarily dispose of his property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Hence, when a male Hindu executes a will bequeathing the properties, the legatees take it subject to the terms of the will unless of course, any stipulation therein is found invalid. Therefore, there is nothing in the Act which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he deems fit. His will hence could not be challenged as being hit by the Act.

14. When he thus validly disposes of his property by providing for a limited estate to his heir, the wife, the wife or widow has to take it as the estate falls. This restriction on her right so provided, is really respected by the Act. It provides in Section 14(2) of the Act, that in such a case, the widow is bound by the limitation on her right and she cannot claim any higher right by invoking Section 14(1) of the Act. In other words, conferment of a limited estate which is otherwise valid in law is reinforced by this Act by

the introduction of Section 14(2) of the Act and excluding the operation of Section 14(1) of the Act, even if that provision is held to be attracted in the case of a succession under the Act. Invocation of Section 14(1) of the Act in the case of a testamentary disposition taking effect after the Act, would make Sections 30 and 14(2) redundant or otios. It will also make redundant, the expression 'property possessed by a female Hindu' occurring in Section 14(1) of the Act. An interpretation that leads to such a result cannot certainly be accepted. Surely, there is nothing in the Act compelling such an interpretation. Sections 14 and 30 both have play. Section 14(1) applies in a case where the female had received the property prior to the Act being entitled to it as a matter of right, even if the right be to a limited estate under the Mitakshara law or the right to maintenance."

Still further, in a recent judgment passed by the Hon'ble Supreme Court while deciding CA No.21784 of 2017, titled as *Mr. Ranvir Dewan Vs. Mrs. Rashmi Khanna and another*, decided on 12.12.2017 has also laid down on the similar lines.

Hence, it is held that Udhi-plaintiff-appellant did not become owner of 1/4th share of the estate of Chanda Singh. Hence, the question No.1 is answered against the appellant.

2. Whether in the absence of the pleadings of the previous suit, having been brought on the file, whether the Court is justified in returning a finding that the subsequent suit is barred under Order 2 Rule 2 CPC?

It is undisputed before me that the plaintiff-appellant had earlier filed a suit for permanent injunction restraining her sons who are

defendants in the present suit from permanently alienating or transferring her share in the property. The suit was instituted on 29.01.1979. In that suit, it was claimed by the plaintiff that the defendants have no right to alienate the property which had fallen to her share. The Court on the basis of the pleadings, did not frame any issue with regard to the ownership of the plaintiff-appellant-Udhi on the basis of the Will dated 22.07.1960. The trial Court decreed the suit and restrained the defendants from alienating 1/4th share of the land. Such suit for permanent injunction cannot be treated as a bar to file a subsequent suit for declaration claiming the ownership. Order 2 Rule 2 CPC provides that if on a particular cause of action, the plaintiff is entitled to one or more further relief and he does not include that relief(s) in the previously instituted suit, he shall be debarred from filing a subsequent suit for the relief which the plaintiff omitted to seek. Order 2 Rule 2 CPC, is extracted as under:-

“2. Suit to include the whole claim.- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all

such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

However, in the present case, Order 2 Rule 2 CPC would not apply for two reasons. Firstly, earlier suit was only for injunction restraining the defendants from alienating her share in the property. Secondly, the pleadings of the previous suit has not been produced. In absence thereof, it is not possible to conclude as to whether the earlier suit was on the same cause of action or not.

Before a defendant is permitted to raise the plea that the subsequent suit is not maintainable on account of the bar created under Order 2 Rule 2 CPC, it is essential for the defendant to produce the plaint filed in the previous suit. After examining the plaint, the Court would be in a position to record a finding that whether the previous suit and the subsequent suit is on the same cause of action or not. Reference in this regard can be made to the judgment passed by the Hon'ble Supreme Court in *Civil Appeal Nos.3056 and 3057 of 2017 titled as Jayantilal Chimanlal Patel Vs. Vadilal Purushottamdas Patel, decided on 21.02.2017*. Hence, the question No.2 is answered in favour of the appellant.

Learned First Appellate Court has committed an error in dismissing the suit filed by the plaintiff in total. The plaintiff had also filed a suit claiming that she is entitled to the estate of Arjan Singh to the extent

of 1/4th share on the basis of the gift deed dated 03.05.1966. The learned trial Court decreed the suit filed by the plaintiff with respect to the 1/4th share from the estate of Arjan Singh on the basis of the gift deed dated 03.05.1966. However, the learned First Appellate Court without making any discussion or reference to the gift deed, dismissed the suit filed by the plaintiff. Hence, the judgment passed by the First Appellate Court with respect to the gift is erroneous.

Learned counsel for the respondent did not dispute that Smt. Udhi-plaintiff is entitled to 1/4th share in the estate of Arjan Singh on the basis of the registered gift deed dated 03.05.1966. Hence, the judgment passed by the First Appellate Court is partly modified. The suit filed by the plaintiff is decreed to the extent of 1/4th share in the estate of Arjan Singh. However, the appeal qua 1/4th share in the estate of Chanda Singh, is dismissed upholding the judgment passed by the learned First Appellate Court.

Regular Second Appeal is partly accepted.

All the pending miscellaneous applications are disposed of, in terms of the aforesaid judgment.

23.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No