

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

RSA No.145 of 1991 (O & M)
Date of Decision:26.02.2018

Kartar Singh (dead) through his LRs and another ...Appellants

Versus

Sardara Singh (since deceased) through his LRs ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwaljit Singh, Senior Advocate with
 Mr. Abhinav Aggarwal, Advocate
 for the appellants.

Ms. Alka Sarin, Advocate
for the respondent.

ANIL KSHETARPAL, J.

Defendants-appellants are in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the learned trial Court.

Plaintiff-Sardara Singh filed a suit for declaration claiming that he is owner in possession of land measuring 93 kanals and 17 marlas being half share of land measuring 187 kanals and 14 marlas by virtue of terms of the family settlement dated 13.04.1967. Plaintiff also challenged a civil Court decree dated 16.07.1986 passed in favour of Kartar Singh and against Gurdial Kaur.

The substantial question of law arises in the present case is that:-

“Whether the judgment of the learned First

Appellate Court while making a reference to Section 14 (2) of the Hindu Succession Act and while returning the finding that Gurdial Kaur was only a limited owner, is a result of misreading of deed of family settlement dated 13.04.1967.”

Facts – (i) Harnam Singh was original owner. Initially he was married to Smt. Nand Kaur and two sons namely Sardara Singh (plaintiff) and Kartar Singh (defendant No.1) were born. Thereafter, Smt. Nand Kaur, the first wife died and Harnam Singh re-married with Smt. Gurdial Kaur (defendant No.2) and late Shri Gajjan Singh, a son was born. On 13.04.1967, a family settlement was arrived at and the parties divided the land. A translated copy of the deed of family settlement has been produced before this Court, correctness whereof is not being disputed.

A careful reading of the deed in the family settlement establishes that Kartar Singh (defendant No.1) was given exclusive possession and ownership of land measuring 46 kanals and 12 marlas, whereas Sardara Singh was allotted land measuring 46 kanals and 16 marlas. It was further noticed that Gajjan Singh had been given 47 kanals and 12 marlas but Gajjan Singh had already died before the date of settlement. Hence, the land in his share was allocated to Gurdial Kaur, the mother and she was declared to be absolute owner. Harnam Singh was allocated 42 kanals and 18 marlas of land and it was provided in the family settlement that this land would also be owned by Gurdial Kaur. The deed of family settlement further makes a reference to the land covered by Rect. No.52. This land was jointly owned by 3 brothers namely Sardara Singh,

No.2 of the deed of settlement, it was recorded that Gurdial Kaur shall remain absolute owner and will receive the produce for maintenance but she cannot sell or mortgage during her life time and cannot execute any Will. At the end of the deed of the family settlement, it was once again recorded that Gurdial Kaur will remain owner in possession of share of Harnam Singh and Gajjan Singh.

It may be significant to mention here that the land comprised in Rect. No.52 is not subject matter of dispute in the present litigation. It is further not in dispute that Harnam Singh killed Gajjan Singh, his son, from second wife somewhere in the year 1964-65 and was convicted for the offence.

Gurdial Kaur suffered a consent decree with respect to land owned by her i.e. share of Harnam Singh and Gajjan Singh in favour of Kartar Singh (defendant No.1) son of Harnam Singh from first marriage.

Now the stage is set for considering the question of law.

“Whether the judgment of the learned First Appellate Court while making a reference to Section 14 (2) of the Hindu Succession Act and while returning the finding that Gurdial Kaur was only a limited owner, is a result of misreading of deed of family settlement dated 13.04.1967.”

Learned First Appellate Court has totally misdirected itself while deciding the first appeal. Learned First Appellate Court has held that the deed of family settlement is only giving Gurdial Kaur (defendant No.2) life interest. The learned Court has held that since the life interest as given

revert back to the legal heirs of Harnam Singh, her husband.

A careful reading of the deed of family settlement does not establish that Gurdial Kaur was conferred only life interest. In serial No.1 of the deed of family settlement, three different columns have been drawn. From left hand side, first column identify the land allotted to Kartar Singh, whereas second column provides the land allotted to Sardara Singh and third column deals with land of Late Shri Gajjan Singh son of Harnam Singh and Gurdial Kaur. For facility of reference, these three columns are drawn as under:-

1	2	3
No.1 Possession of Kartar Singh Killas of Rect. No.49	Possession of Sardara Singh Rect. No.49	Possession of Gajjan Singh s/o Harnam Singh s/o Sawan Singh Pannu, Resident of Sidhwan Bet. Rect.No.49
<u>4</u>	<u>3</u>	<u>5</u>
<u>7</u>	<u>8</u> <u>48</u>	<u>6</u>
<u>14</u>	<u>13</u> 25	<u>15</u>
<u>17</u>	<u>18</u>	<u>16</u>
<u>24</u>	<u>23</u>	<u>22</u>
<u>25</u>	The above killas are under ownership of Sardara Singh	<u>25</u>
The above killas are under ownership of Kartar Singh		Possession of Harnam Singh self. Rect No.44 in full.old well.
		Rect No.26 Mand in full. After death of Gajjan Singh possession of Gajjan Singh and Harnam Singh both have been taken by Smt. Gurdial Kaur, widow of Harnam Singh. Now <u>Gurdial Kaur</u> is owner.

The life interest of Gurdial Kaur was only with reference to land comprised in Rectangle No.52, although it is stated in serial No.2 that

Gurdial Kaur shall remain absolute owner but she cannot sell or mortgage during her life time. Serial No.2 is extracted as under:-

“Land covered by Rect No.52, Killa Nos.52/9, 10/2/ 11/1, 11/2, 13, 17, 18, 19, 20/2 is owned in possession of three brothers. Total area is 43 Kanals 11 Marlas. Out of which 1/3 share is in ownership of Chaman Lal etc ss/o Roda Ram. Remaining 2/3 share is under ownership of three brothers. Harnam Singh are continuous owners in possession and out of which 2 kanals 10 marlas as per agreement Bachan Singh etc are in possession. Remaining three brothers in equal shares are owners. After death of Gajjan Singh share of Gajjan Singh becomes to Smt. Gurdial Kaur widow of Harnam Singh. Signed by Harnam Singh that after his death Smt. Gurdial Kaur shall remain absolute owner and will receive the produce for maintenance. She cannot sell or mortgage during her life time and cannot execute any will.”

As noticed earlier in the concluding part of the deed of family settlement once again it is recorded as under:-

“ Smt. Gurdial Kaur will remain owner in possession of shares of myself and Gajjan Singh respectively.”

in Rect. No.52 and Killa number mentioned in serial No.2 of the deed of settlement.

In the considered opinion of this Court, Column No.3 at Serial No.1 of the deed of family settlement reproduced above clearly proves that Gurdial Kaur was conferred absolute ownership of the property. Hence, Gurdial Kaur being owner was entitled to acknowledge a further subsequence family settlement with Kartar Singh. Gurdial Kaur has appeared in the witness box before the learned trial Court and has stated that she with her free will she had acknowledged Kartar Singh as owner of the property in a family settlement which was further acknowledged before the Court resulting into decree dated 16.07.1986. Gurdial Kaur further stated that Sardara Singh abuses her and his wife had slapped her. Hence, the relationship between Gurdial Kaur and the family of Sardara Singh are not cordial.

Learned First Appellate Court has further held that Column No. 3 of the deed of the family settlement is illegal because the property was given to Gajjan Singh, although he was already dead.

A careful reading of Column No.3 proves that the factum of death of Gajjan Singh has been noticed and thereafter it is recorded that Gurdial Kaur is the owner of the property which fell to the share of late Sh. Gajjan Singh. Such fact is also recorded with respect to the share of Harnam Singh because he was convicted for killing Gajjan Singh. Hence, learned First Appellate Court has committed a material irregularity in declaring that deed of family settlement with respect to allocation of share of Gajjan Singh, illegal.

answered in favour of the appellants. Judgment and decree passed by the learned First Appellate Court is set aside and judgment and decree passed by the learned trial Court is restored.

Regular second appeal is allowed.

26.02.2018

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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No