

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

RSA No.2934 of 1996 (O&M)

Date of decision:03.08.2018

Gurdas @ Gurdas Singh

... Appellant

Vs.

Prem Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. K.S.Cheema, Advocate
for the appellant.

Mr. Mukul Aggarwal, Advocate
for respondents No.1 to 3.

AMIT RAWAL J.

The appellant-defendant is in Regular Second Appeal against the concurrent findings of facts and law, whereby suit of the plaintiff seeking declaration of having become absolute owner in possession of the land described therein (hereinafter called “the suit land”), has been decreed and counter claim set up, has been dismissed.

The facts necessary for adjudication of the appeal are that Kailash Devi widow of Latwar through attorney-Prem Singh instituted the suit seeking aforementioned relief on the premise that Jai Gopal had two sons, namely, Latwar and Daulat Singh. Kailash Devi was the widow of Latwar. Latwar died in the year 1932, whereas, Jai Gopal died in the year 1941, in essence, Latwar predeceased his father Jai Gopal as he died in the

year 1932. Daulat Singh left behind one son Gurdas Singh, defendant. The plaintiff obtained life estate in the property of Jai Gopal in dispute on the premise that she had become the owner by virtue of a compromise arrived at in a civil suit No.4 of 1938 and in view of the provisions of Section 14(1) of Hindu Succession Act, 1956 (hereinafter called as “1956 Act”) had acquired the title in the property. The plaintiff came into possession of the suit land and had been in possession throughout “In Lieu of Maintenance” before coming into force 1956 Act and in alternative, it was set up that in case, the plaintiff had not been proved to be in possession as heir or “In Lieu of Maintenance”, she had become the absolute owner of the suit land. The plaintiff had been in continuous possession of the suit land. The cause of action accrued to institute the suit only when defendants started approaching the revenue authorities for sanctioning of the mutation, on the basis, of inheritance.

The suit aforementioned was contested by the appellant-defendant by raising numerous preliminary objections. It was stated that plaintiff was not absolute owner of the suit land as she got “life estate” with regard to 12 kanals out of the suit land. The agreement between the plaintiff and Jai Gopal was only in respect of 12 kanals of land. The agreement has not been proved or brought on record and after the commencement of 1956 Act, plaintiff was recorded as “limited owner” as per the provisions of Section 14(2) of 1956 Act. In the alternative set up a counter claim that defendants had become owners in possession qua $\frac{1}{2}$ share of the suit land.

On merit, it was alleged that defendant was minor in the year 1942 as he was aged 5 years and plaintiff obtained the mutation by submitting wrong information. The property was liable to be inherited by way of natural succession as Jai Gopal died intestate. The plaintiff filed the written statement to the counter claim denied the claim of the defendants.

Since both the parties were at variance, the trial Court framed the following issues:-

“1. Whether the plaintiff is owner in possession of the property in dispute?OPP

2. Whether the plaintiff is entitled to the injunction as prayed for?OPP

3. Whether plaintiff has got no locus standi to file the present suit?OPD

4. Whether plaintiff is estopped by her act and conduct from filing the present suit?OPD

5. Whether property in dispute is a Hindu Co-parcenary property?OPD

5-A Whether defendant is entitled to the decree as prayed for in the primary relief?OPD

5-B If issue no.5 is not proved, whether defendant is entitled to take the alternative relief for joint possession of half share of the suit property?OPD

5-C Whether the counter claim filed by the defendant is within time?OPD

5-D Whether counter claim is not maintainable?OPD

5-E Whether the defendant is estopped by his act and conduct to file the counter claim?OPP

5-F Whether the counter claim is barred by the principles of resjudicata?OPP

6. Relief.”

The plaintiff examined Prem Singh, her attorney as PW1 and brought on record documents, Ex.P1 to Ex.P7. On the other hand, defendants examined as many as 06 (six) witnesses and The trial Court on the basis of evidence brought on record by rejecting the evidence of the defendants, i.e.,Ex.DA to DM decreed the suit. Accordingly, the plaintiff became the absolute owner of the suit land and dismissed the counter claim. The appeal laid before the Lower Appellate Court was also dismissed.

Mr. K.S.Cheema, learned counsel appearing on behalf of the appellant submitted that both the Courts below have abdicated in decreeing the suit as admittedly no compromise or agreement allegedly entered between Jai Gopal and Kailash Devi had been proved on record. Only a sum of ₹7/- per month as maintenance *vis-a-vis* property measuring 12 kanals was subject of charge and not of the entire/remaining land. The property was liable to be inherited on demise of Jai Gopal in equal share amongst the legal representatives of Latwar and Daulat Singh, husband of plaintiff and father of defendants. As per the provisions of Section 14 of 1956 Act, there is a stark difference between “In Lieu of Maintenance” and “Life Interest”.

The judgment rendered by Hon'ble the Supreme Court in **Jupudy Pardha Sarathy Vs. Pentapati Rama Krishna and others 2016(2) Supreme Court Cases 56**, according the full ownership to a widow as per the provisions of Section 14(1) of 1956 Act, is not correct provision of law in view of the latest judgment rendered by Hon'ble the Supreme Court in **Mr. Ranvir Dewan Vs. Mrs. Rashmi Khanna and another 2018(1) RCR (Civil) 193**. If a widow has been given “Life Interest”, it has been held that beneficiary was given limited right in the property which would not ripen in the full ownership but “In Lieu of Maintenance”, definitely the limited right would ripe into full ownership. The plaintiff has miserably failed to prove the charge on the entire property “In Lieu of Maintenance” as set up in the plaint, therefore, provisions of Section 101 of Indian Evidence Act, have not been complied with. The copy of the plaint, (Ex.DC) in respect of the maintenance proceedings and the order dated 17.08.1938 (Ex.DD) revealed that suit for maintenance was dismissed but the copy of the agreement had not seen the light of day. On death of Jai Gopal, mutation of inheritance (Ex.DG) was sanctioned in favour of Kailash Devi alone as life interest. The findings of both the Courts below are not sustainable in the eyes of law as the plaintiff has miserably failed to prove on record any other document or title *vis-a-vis* estate of Jai Gopal.

The Courts below have wrongly presumed that Jai Gopal had gifted some land to Daulat Singh, father of the appellant but no evidence in this regard has been proved on record. Owing to dismissal of the suit for

maintenance, the plaintiff was not entitled to inherit the property left by Jai Gopal as per the provisions of Section 14(1) of 1956 Act. Even the alleged oral gift was qua half share of the land in favour of Daulat Singh had not been proved on record. The plaintiff had not stepped into witness box but only her attorney had appeared.

Per contra, Mr. Mukul Aggarwal, learned counsel appearing on behalf of the respondents supported the judgments of the Courts below on the premise that finding of fact and law arrived at by both the Courts below do not call for any interference until and unless there is gross illegality and perversity. The Lower Appellate Court being the last Court of fact and law after examination of the entire evidence noticed that the plaintiff had become the absolute owner of the property owing to the fact that mutation dated 12.03.1942 (Ex.DG) was sanctioned in favour of the plaintiff. In the mutation, it was stated that she could not sell or mortgage the property. Kishan Chand, DW5 during the cross-examination admitted that plaintiff had been in possession of the land in dispute for the last 50 (fifty) years. The suit of maintenance was not dismissed simpliciter but on the basis of compromise arrived at between the parties and therefore, her right owing to the enforcement of 1956 Act as per the provisions of Section 14(1), enlarged into full ownership.

The defendants could not set up a counter claim, for, earlier suit for possession in respect of suit land, vide judgment and decree, Ex.P4 and Ex.P5 was dismissed and thus, urged this Court for upholding the findings under challenge.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is force and merit in the submissions of Mr. Cheema. The reason is not only the one but many:-

1) Concededly, the compromise on the basis of which the suit (Ex.DD) for maintenance was dismissed, had not seen the light of day. In this view of the matter, this Court is prevented from rendering the decision whether the maintenance is “Life Interest” or “In Lieu of Maintenance”.

2) It has not been denied on behalf of the defendants that charge *vis-a-vis* maintenance was only on 12 kanals of land, whereas, the total land was 80 kanals.

3) No evidence has been placed on record as to whether Jai Gopal had not died intestate, in essence, left behind any Will.

4) Sections 14(1) and (2) of 1956 Act deal with the situation according the status to the wife of full ownership or to the limited extent.

For the sake of brevity, aforementioned provisions read as under:-

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.”

5. As per the Explanation of sub-section (1), the right in the property by a female Hindu would ripen into ownership in case it was “In Lieu of Maintenance” besides other circumstances but in sub-section (2), her ownership would be “limited” if it was by way of gift under Will or any other instrument or under a decree or order of the Civil Court.

6. As per the case set up by the respondent-plaintiff, by virtue of the order of the Court, Kailash Devi acquired the right in the entire property of Jai Gopal “In Lieu of Maintenance”.

7. The argument/submission of Mr. Mukul Aggarwal, is thus, repelled. Whether plaintiff got the property “In Lieu of Maintenance” or “Life Interest”, in other words, whether sub-section (1) or (2) of 1956 Act, would apply. The applicability of the aforementioned provisions came

to be discussed by Hon'ble the Supreme Court in **Jupudy Pardha Sarathy's case (supra)** and in para 28 of the judgment while interpreting the contents of the Will, it was found that wife was given a right in the property i.e., “In Lieu of Maintenance” which is the expression used in the Explanation of sub-section (1) of Section 14 of 1956 Act.

8. However, in the instant case, there is no document on record to establish that charge was created as maintenance in favour of the appellant-plaintiff, thus, for all intents and purposes, it would be “Life Interest” that is life time of Kailash Devi, for, during her life time, she could not claim the ownership by filing the aforementioned suit, in essence, the suit was not maintainable. The applicability of Section 14(2) of 1956 Act, came to be discussed by Hon'ble the Supreme Court in paragraphs 36, 37, 41, 43 to 46 of **Mr. Ranvir Dewan's case (supra)**. The same reads as under:-

“36. It is a settled principle of law that what the testator intended to bequeath to any person(s) in his Will has to be gathered primarily by reading the recitals of the Will only.

37. As mentioned above, reading of the Will would go to show that it does not leave any kind of ambiguity therein and one can easily find out as to how and in what manner and with what rights, the testator wished to give to three of his legal representatives his self acquired properties and how he wanted to make its disposition.

41. Reading of the aforementioned principle of law laid down in the cases of *V. Tulasamma and Sadhu Singh (supra)*, it is clear that the ambit of [Section 14\(2\)](#) of the Act must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a “restricted estate” in the property. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of [Section 14\(2\)](#) of the Act, even if the instrument, decree, order or award allotting the property prescribes a “restricted estate” in the property.

43. A fortiori, plaintiff No.2-late Mrs.Pritam received only “life interest” in the suit house by the Will dated 24.06.1986 from her late husband and such “life interest” was neither enlarged nor ripened into an absolute interest in the suit house and remained “life interest”, i.e., “restricted estate” till her death under [Section 14\(2\)](#) of the Act. This we say for following factual reasons arising in the case.

44. First, the testator-Mr.Dewan being the exclusive owner of the suit house was free to dispose of his property the way he liked because it was his self earned property.

45. Second, the testator gave the suit house in absolute

ownership to his son and the daughter and conferred on them absolute ownership. At the same time, he gave only “life interest” to his wife, i.e., a right to live in the suit house which belonged to son and daughter. Such disposition, the testator could make by virtue of [Section 14 \(2\)](#) read with [Section 30](#) of the Act.

46. Third, such “life interest” was in the nature of “restricted estate” under [Section 14\(2\)](#) of the Act which remained a “restricted estate” till her death and did not ripen into an “absolute interest” under [Section 14\(1\)](#) of the Act. In other words, once the case falls under [Section 14\(2\)](#) of the Act, it comes out of [Section 14\(1\)](#). It is permissible in law because [Section 14\(2\)](#) is held as proviso to [Section 14\(1\)](#) of the Act.”

Both the Courts below, in my view, have abdicated in not appreciating the provisions of law and swayed away by relying upon the mutation Ex.DG ignoring the fact that mutation does not confer title and it is only for the fiscal purposes.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be

filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued,

being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

As an upshot of my findings, judgments and decrees of both the Courts below are not sustainable and hereby set aside with a modification that respondent-plaintiff is accorded the ownership in the suit property to

the extent of ½ share, i.e., interest of her husband being son of Jai Gopal and appellant-defendant ½ share. Decree sheet is ordered to be prepared.

Resultantly, the appeal stands allowed in the aforementioned terms.

August 03, 2018

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No