

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

1. RSA No.319 of 1996 (O&M)
Date of decision : 19.11.2018
Harbhajan Singh ...Appellant

Versus

Gurdev Singh and others ...Respondents

2. RSA No.977 of 1996 (O&M)
Date of decision : 19.11.2018
Santosh Kumari ...Appellant

Versus

Gurdev Singh and others ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate for the appellant.

Mr. Jagjit Singh, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

By this common order, two appeals bearing RSA Nos.319 and 977 of 1996, shall stand disposed of.

Two suits, one filed by Santosh Kumari and second filed by Santosh Rani alongwith her husband Harbhajan Singh, were decided by consolidated judgment passed by the trial Court. The trial Court framed the following issues in both the suits:-

- “1. Whether the plaintiff is the owner in possession of the suit property as alleged? OPP.*
- 2. Whether the suit is barred by their principle of resjudicata? OPD*
- 3. Whether the suit is bad for non-joinder of natural heirs of Narain Singh as alleged? OPP*
- 4. Whether Harbhajan Singh husband of Santosh Kumari sold some part of the land in dispute during the pendency of*

the suit on the basis of registered sale deed, if so to what effect? OPD

5. *Whether the plaintiff is estopped to file the suit by his act and conduct? OPD*

6. *Whether Gurbachan Singh executed a valid registered Will in favour of the plaintiff? OPP*

7. *Whether Jagdish Kaur d/o Gurbachan Singh is the co-sharer in the property in dispute, if so to what effect? OPF*

Issues in the second suit.

1. *Whether Gurbachan Singh executed a valid will in favour of the plaintiff as alleged? OPP.*

2. *Whether the plaintiffs are the owners in possession of the suit land? OPP.*

3. *Whether the suit is liable to be stayed under Section 10 CPC? OPD.*

4. *Whether the suit is bad for non-joinder of Jagdish Kaur d/o Gurbachan Singh? OPD.*

5. *Whether the sale of the property during the pendency of the suit by plaintiff No.2 has no effect on the rights of the defendants as alleged? OPD.*

6. *Relief.”*

Learned trial Court disposed of the suits and decided the controversy.

However, learned First Appellate Court decided the appeals in wholly perfunctory manner. The entire discussion of the First Appellate Court is as under:-

“Counsel for the respondent/defendants urged that in this case if the original owner Gurbachan Singh had died more than 45 years ago and mutation has been sanctioned in favour of Gurbachan Singh in the year 1959 but neither Gurbachan Singh nor his son i.e. husband of the plaintiff had filed any claim for the last 40 years against the adoption of Natha Singh

and the plaintiff had filed the suit for the first time in the year 1984 only, therefore, in the present circumstances it is proved that Gurbachan Singh had admitted the claim of Natha Singh throughout his life and he had weived all his rights qua the land in suit and had consented in the rights of Natha Singh in the land in suit for more than 30 years and he has left any right in the land in suit much before his death, therefore, neither the son of Gurbachan Singh nor the present plaintiff who is daughter in law of said Gurbachan Singh had left with any right at the time of death of Gurbachan Singh to claim the property from Natha Singh in the year 1981, therefore, the suit was totally without any base because the starting point of limitation of hostile title is 12 years according to 1992 PLJ 442 and principle of possession of one co-sharer in possession of all is not applicable to the facts of the present case as the present plaintiff wanted to defeat the rights of the co-sharer Natha Singh and is not releing upon the owners ownership on the basis of co-sharer. Therefore, not only the present plaintiff but her husband and her father in law Gurbachan Singh had not only lost the remedy but also had lost the right in the suit land much before his death and sanction of mutation in the year 1981, therefore, the present plaintiffs were estopped from filing the present suit even according to 1992 PLJ page 30 wherein the limitation is 12 years even in case of cosharer, therefore, I affirm the findings of the trial Court in both cases and plaintiff had no right to claim the rights of her father in law in the suit property which he had lost much before his death in the year 1981, therefore, the appeals fail and the same is dismissed. Copy of judgment be placed in other appeal. No other in this order will effect rivals claimants of the parties who want to become legal representatives of Natha Singh deceased, and that question will be decided in a separate suit. Decree sheet be prepared. File be consigned to the record room.”

The manner of disposal of two appeals by the First Appellate Court which is last Court for appreciation of the facts is wholly unsatisfactory. Learned First Appellate Court has neither adjudicated upon the issue of a registered Will executed by Gurbachan Singh nor opined about the correctness of the assertions made by the plaintiffs-appellants with regard to the validity of the adoption of Natha Singh.

It would not be proper for this Court to deliberate further on the merits of the case. Since, this Court is of the opinion that both the appeals are required to be remitted back to the First Appellate Court to re-decide the entire dispute. Keeping in view the aforesaid facts, the judgments passed in both the first appeals disposed of by a common judgment are set aside and the First Appellate Court is directed to re-decide the appeals in accordance with Section 96 of the Code of Civil Procedure.

Parties through their counsel are directed to appear before the First Appellate Court on 03.12.2018.

Since all the parties are not represented by counsel before this Court, therefore, the First Appellate Court would take steps to serve the unrepresented respondents.

In view of the above, both the appeals are disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

19.11.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No