

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

Date of Decision: March 21, 2018

1. **RSA No.739 of 2008 (O&M)**

Joginder Singh (since deceased) through L.Rs

...Appellants

Versus

Bhag Singh & others

...Respondents

2. **RSA No.3812 of 2008 (O&M)**

Daljit Singh & another

...Appellants

Versus

Joginder Singh & another

...Respondents

3. **SAO No.6 of 2008 (O&M)**

Smt.Amar Kaur & another

...Appellants

Versus

Daljit Singh & others

...Respondents

4 **SAO No.7 of 2008 (O&M)**

Smt.Amar Kaur & another

...Appellants

Versus

Bhag Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Amit Jain, Advocate,
for the appellants in RSA No.739 of 2008,
for respondent No.1 in RSA No.3812 of 2008 &
for respondent No.4 in SAO Nos.6 & 7 of 2008.

Ms.Aashna, Advocate,
for the appellants in RSA No.3812 of 2008,
for respondent Nos.1 to 3 in RSA No.739 of 2008,
for respondent Nos.1 to 3 in SAO Nos.6 & 7 of 2008.

Mr.H.S.Dhandi, Advocate,
for the appellants in SAO No.6, 7 of 2008 &
for respondent No.2 in RSA No.3812 of 2008.

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeals bearing No.739 and 3812 of 2008 and two SAO Nos.6 and 7 of 2008 as the common questions of law and fact are involved. The facts are being taken from RSA No.739 of 2008.

RSA No.739 of 2008 is at the instance of Joginder Singh (plaintiff in Civil Suit No.22 of 1995 titled as “Joginder Singh Versus Karnail Singh & others”) and RSA No.3812 of 2008 is at the instance of Daljit Singh and Ranjit Singh (defendants No.3 and 4 in Civil Suit No.22 of 1995), arisen on account of the adjudication of the aforementioned suit, which was decreed in toto, but since the same was assailed by two sets of defendants, i.e., defendant No.2 Bhag Singh and defendants No.3 and 4 Daljit Singh and Ranjit Singh by filing Civil Appeal Nos.97 & 98 of 2006 and vide judgment and decree dated 31.8.2007, Civil Appeal No.97 of 2006 filed by Bhag Singh, defendant No.2, was allowed and Civil Appeal No.98 of 2006 filed by Daljit Singh and Ranjit Singh dismissed and two SAO Nos.6 and 7 of 2008 have arisen out of the order of the Lower Appellate Court, whereby in an appeal preferred by the defendants, Civil Suit No.207 dated 27.1.2006 titled as “Smt.Amar Kaur & others Versus Karnail Singh & others” decreed by the trial Court vide judgment and decree dated 9.9.2006, has been remitted to the trial Court vide judgment dated 31.8.2007. In both the suits, the challenge laid was to the sale deed dated 21.11.1993 executed by Karnail Singh in favour of defendant No.2 Bhag Singh and decree dated 30.1.1995 rendered in Civil Suit No.332 dated 10.11.1994 in respect of land described therein by Karnail Singh in favour of defendants No.3 and 4 on the premise that the land, subject matter of the decree in respect of land

measuring 44 kanals 17 marlas and sale deed in respect of land measuring 13 kanals 4 marlas, was ancestral at the hands of Karnail Singh.

Plaintiff Joginder Singh in Civil Suit No.22 of 1995 and sisters in Civil Suit No.207 of 2006 asserted that as per the revenue record, the property at the hands of Karnail Singh was ancestral as he inherited from his father Waryam Singh, who inherited from his father Rulia and, therefore, being 4th generation in lineage had a right by birth. The total land in dispute was 58 kanals 1 marla.

The defendants contested the suit challenging the nature and character of the property as self-acquired and denied that it was ancestral. Various other objections were taken.

The trial Court, on the basis of the pleadings of the parties, framed the following issues in Suit No.22 of 1995:-

1. *Whether the plaintiff is entitled to declaration as prayed for? OPP*
2. *Whether the sale deed dated 21.11.93 executed by defendant No.1 in favour of defendant No.2 is null and void? OPP*
3. *Whether the decree dated 30.1.95 passed by the court of Miss Mandip Bhullar, Sub Judge, Ludhiana is illegal and void? OPP*
4. *Whether the plaintiff is entitled to injunction as prayed for? OPP*
5. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
6. *Whether the suit of the plaintiff is time barred? OPD*
7. *Whether the plaintiff has no cause of action to file the suit? OPD*
8. *Whether the plaintiff is estopped by his act and conduct in filing the suit? OPD*
9. *Whether the suit is bad for mis-joinder and non-joinder*

of parties? OPD

10. *Whether the plaintiff has no locus standi to file the suit?*

OPD

11. *Relief.*

However, in Civil Suit No.207 of 2006 preferred by the daughters of Karnail Singh, following issues were framed:-

“1. *Whether the plaintiff is entitled to declaration that the sale deed dt.21.11.93 is null and void? OPP*

2. *Whether the plaintiff is entitled to declaration that the decree dt.30.1.95 is collusive, illegal and void? OPP*

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

4. *Whether the suit is not maintainable in the present form? OPD*

5. *Whether the suit is not within the limitation? OPD*

6. *Whether the plaintiff has no cause of action? OPD*

7. *Whether the suit is bad for non-joinder of parties? OPD*

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

9. *Relief.”*

Plaintiff Joginder Singh, in order to support the claim in the plaint, examined PW-1 Pritam Singh, PW-2 Gurmail Singh Numberdar of Village Dhaipai, PW-3 Mohan Lal Kanungo (retired), who brought on record excerpt Ex.PW3/A and himself appeared as PW-4. On the other hand, the defendants examined DW-1 Sukhdev Singh, DW-2 Dayal Singh, DW-3 Mohinder Singh, DW-4 Nachhattar Kaur, DW-5 Bhag Singh (defendant No.2) and DW-6 Manjit Kaur. In rebuttal, plaintiff examined PW-5 Shingara Singh and PW-6 Rattandeep Kaur.

The trial Court, on the basis of the evidence and the excerpt, decreed the suit holding that the subject matter of the decree and sale deed

was ancestral and, therefore, set-aside the aforementioned sale deed and decree. As noticed above, two appeals were laid and the Lower Appellate Court upheld the judgment and decree of the trial Court visa-a-vis the judgment and decree dated 30.1.1995, but accepted the argument of the defendants vis-a-vis the sale deed dated 21.11.1983 holding the suit to be barred by law of limitation.

Ms.Aashna, learned counsel appearing on behalf of the appellants in RSA No.3812 of 2008 submitted that PW-3 Mohan Lal Kanungo did not bring on record the original excerpt nor the same was certified copy, which is the essential requirement of law as per the judgment rendered in **Banta Singh and others Versus Phuman Singh and another,** 1972 PLJ 275. The aforementioned judgment had been rendered on the basis of the interpretation of High Court Rules and Regulations, therefore, the character and nature of the property at the hands of Karnail Singh had not been proved. The plaintiff failed to discharge the onus as per the provisions of Section 101 of the Indian Evidence Act. Defendant No.2 proved that he had already got the share from his father Karnail Singh as they are living separately for the last forty years.

Per contra, Mr.Amit Jain, learned counsel appearing on behalf of the appellant-plaintiff in RSA No.739 of 2008 submitted that the judgment and decree of the trial Court was fair, legal and justified as it appreciated the contents of the excerpt Ex.PW3/A, for, the same have not been rebutted by any direct, positive or corroborative evidence. No doubt, Mohan Lal Kanungo, who had prepared the excerpt, stated that he had not brought the original revenue record, but all the mutations reflected therein showed that the suit property came to the share of Karnail Singh from

Waryam Singh and Waryam Singh from Rulia and since Joginder Singh was the son of Karnail Singh, he could not have alienated the property except for legal necessity by virtue of sale deed and decree. Both these documents do not envisage that the same were executed for the benefit of the family or for legal necessity.

He further submitted that there is a categorical admission in the aforementioned pleadings of Civil Suit bearing No.332 of 1994 resulting into decree dated 30.1.1995 that the nature and character of the property was admitted to be ancestral. During the course of hearing, he had also shown copy of the excerpt Ex.PW3/A which showed that mutation Nos.227 and 228 showed that the property had fallen to Rulia from Waryam and Waryam to Karnail Singh. There is no limitation for asserting the right in the property, thus, the judgment and decree of the Lower Appellate Court in keeping the sale deed 21.11.1983 intact is not the correct appreciation of law and liable to be set-aside. The aforementioned argument has been raised in support of the RSA No.739 of 2008 preferred by plaintiff Joginder Singh.

Mr.H.S.Dhandi, learned counsel appearing on behalf of the appellants in SAO Nos.6 and 7 of 2008 (plaintiffs in Civil Suit No.207 of 2006) asserted that the trial Court, on the basis of the excerpt Ex.PW3/A, as piece of evidence, brought on record in Civil Suit No.22 of 1995 titled as “Joginder Singh Versus Karnail Singh & others”, decreed the suit. The defendants assailed the aforementioned judgment and decree and the Lower Appellate Court remitted the matter to the trial Court with a direction to give findings on the issues afresh considering the evidence on record after re-admitting the suit to its original number and, thus, urged this Court for setting-aside the order under challenge.

I have heard the learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Ms.Aashna and the reason is not one but many:-

a) The testimony of PW-3 Mohan Lal Kanungo had been read over during the course of hearing, who stated that he had prepared the excerpt after examining the original record, but had not brought the same. In **Banta Singh and others Versus Phuman Singh and another, 1972 PLJ 275**, an occasion arose vis-a-vis admissibility of the excerpt on the premise that where there was a misreading in the excerpt, it is in that circumstance, it was held that the original excerpt was required to be placed on record. However, the excerpt Ex.PW3/A showed the inheritance of the property by Karnail Singh from his father Waryam Singh and grand-father Rulia. Even the translated copy vis-a-vis the aforementioned mutations is also to the same effect;

b) In the previous pleadings, i.e., Civil Suit No.332 of 1994 resulting into decree dated 30.1.1995, there was a categorical admission of the parties with regard to the nature and character of the property as ancestral. This fact, in my view, has not been taken into consideration by the trial Court and as well as by the Lower Appellate Court vis-a-vis the decree. However, the findings of the Lower Appellate Court in not bringing the suit property subject matter of the sale deed dated 21.11.1983 within the ambit of ancestral property, had been on the ground

of suit being barred by law of limitation. It is settled law that for claiming title, there is no limitation. The aforementioned findings of the Lower Appellate Court are totally perverse and fallacious;

c) The challenge, aforementioned, laid could not have been said to be barred by law of limitation;

d) The admission of defendant No.2 that he had already parted with the share and living separately for the last forty years would not run contrary to the evidence brought on record therefore, the argument of Ms.Aashna is also wholly misplaced and hereby rejected.

The question, which is to be decided by me, is whether in view of the fact that the the nature and character of the property at the hands of Karnail Singh has been held to be ancestral, the daughters would have a right in the property as a right in favour of the daughters had been created by the Legislation by causing amendment in Section 6 of the Hindu Succession Act w.e.f. 9.3.2005. This point had arisen for adjudication, for, had it not been so, I would have set-aside the order of the Lower Appellate Court remitted the matter to the trial Court as two suits for challenging the same documents would not be necessary, but since it is yet to be determined whether the daughters would have a right or not, I am of the view that the findings rendered by the Lower Appellate Court remitting the matter to the trial Court with direction to give findings on the issues afresh considering the evidence on record after re-admitting the suit to its original number are legal and justified.

Mr.Dhandi, during the course of hearing, submitted that if the

remand order is taken as it is, the same would tantamount to take away the right of the plaintiffs, i.e., the daughters in not bringing the fresh evidence in support of the averments made in the plaint. The aforementioned submission of Mr.Dhandi appears to be fair and justified. I would like to add a caveat to the findings of the Lower Appellate Court where direction had been issued to the trial Court to decide the issues afresh that liberty to the plaintiffs to lead evidence in support of the claim by producing on record the excerpt or any other evidence in accordance with law.

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.

Resultantly, Regular Second Appeal No.739 of 2008 titled as “Joginder Singh Versus Bhag Singh & others” is allowed and the judgment and decree of the Lower Appellate Court is set-aside and that of the trial Court is restored, whereas RSA No.3812 of 2008 titled as “Daljit Singh & another Versus Joginder Singh & another” is dismissed.

The SAO Nos.6 and 7 of 2008 are disposed of in terms of the liberty granted.

March 21, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No