

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

RSA No.1997 of 2009

Date of Decision.01.02.2018

Kanwar Singh and others

.....Appellants

Vs

Dhan Singh (since deceased) through LRs

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vivek Khatri, Advocate
for the appellants.

Mr. Balbir Kumar Saini, Advocate for
Mr. Ram Niwas Sharma, Advocate
for the respondent.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs are in appeal against the judgment and decree rendered by lower Appellate Court. Before advertng to the rival contentions of the parties, it would be apt to give preface of the matter. Hirda was owner of the property. He had only son Churhia. Churhia had four sons and one daughter namely Lichhman, Dharma, Dhan Singh, Mara and Dharmo. Churhia died intestate. Resultantly, his property devolved upon all the legal heirs by way of natural succession.

The Civil Suit bearing No.275 of 1994 was filed by all brothers i.e. Dhan Singh, Lichhman, Dharma, Sultan son of Mara (since deceased) against Dharmo, their sister and maternal aunt claiming 1/5th share out of total land measuring 83 kanals 18 marlas comprised in Khewat No.22, Khata No.27 & 28 and 1/5th share out of total land measuring 16 marlas comprised in Khewat No.83, Khata No.129 situated in the revenue estate of Village Rojhla, Tehsil Safidon, District Jind. The aforementioned suit was

decreed by judgment and decree dated 07.04.1994.

The civil suit bearing No.227 dated 3.4.1995 was filed by Dharma son of Churhia and Sultan son of Mara against Lichhman (since deceased) represented by Dhan Singh, Dharma son of Chuhria, brothers of Lichhman and Dharmo daughter of Chuhria claiming declaration that they were owners in possession of the suit land in view of the aforementioned judgment and decree. The aforementioned suit was dismissed by the trial Court vide judgment and decree dated 15.10.1999. A challenge was made to the aforementioned judgment and decree before the lower Appellate Court. The lower Appellate Court vide judgment and decree dated 16.12.2000 decreed the suit and the respondents-defendants therein were proceeded ex parte. On submission of the application by the defendants, ex parte decree was set aside vide order dated 31.07.2003 and the matter was remitted for fresh consideration. It is in this backdrop of the matter, the aforementioned suit was registered afresh bearing No.30 dated 14.12.2006. The trial Court decreed the suit on the premise that in the earlier suit bearing No.227 dated 3.4.95, Lichhman Singh had appeared and admitted the claim of the plaintiffs. However, the lower Appellate Court set aside the finding rendered by the trial Court, hence second appeal.

Mr. Khatri, learned counsel appearing on behalf of the appellants-plaintiffs submitted that once Lichhman had conceded to transfer his share in favour of the appellants-plaintiffs, there was no occasion for the lower Appellate Court to set aside the judgment and decree of the trial Court. No doubt, the said right had been created for the first time, which required registration, they are willing to do so as they did not have occasion for pressing the decree for registration as per the provisions of Section 23 of the Registration Act, 1908. Even the lower Appellate Court *vis-a-vis* the

acquisition of share of Lichhman Singh on account of death of Churhia, which was self-acquired property in the hands of Lichhman Singh non-suited the plaintiffs only for want of registration of the decree as the value of the share of Lichhman Singh was more than ₹100/-. It was not a case of ancestral property whereby share of Lichhman Singh would have been devolved upon all the collaterals i.e. every brother as submitted by the defendants, thus, urges this Court for setting aside the judgment and decree of the lower Appellate Court.

Per contra, Mr. Balbir Kumar Saini learned counsel appearing on behalf of the respondent-defendant submitted that there is no error, illegality or ambiguity in the judgment and decree passed by the lower Appellate Court. He submitted that the prayer in the suit was to the following extent:-

“Suit for declaration to the effect that the plaintiffs are owners in possession in equal share of 1/4th share of agrl. land comprising in Khewat No.22 Khatoni No.27 & 28 total measuring 83 kanals 18 marlas and khewat No.83 khatoni No.129 total measuring 16 marlas vide jamabandi for the year 1990-91 and decree in case No.275 dt. 7-4-94 decided on 7.4.94 titled as Dhan Singh etc. Vs. Smt. Dharmo passed by ld. ASSJ, Safidon situated in the revenue estate of Vill. Rojhla, Teh. Safidon, Dist. Jind and entitled to mutate on their names in the revenue record.”

In fact, the written statement filed by Lichhman was on account of fraud and misrepresentation having been played as his share would have been devolved upon all the brothers which was in the earlier round of

litigation done i.e. vide decree dated 07.04.1994, sister Dharmo had bequeathed her share in favour of all the brothers. Since one of the brother, Mara died, her share transferred to nephew of Dharmo and son of Mara, Sultan. Decree required registration as there was no subsisting right in favour of Lichhman, who acquired title and share for the first time on demise of Chuhria. The contents of plaint were vague nor specified that claim to the share of Lichhman was made.

The provisions of Section 25 of the Registration Act provides that if owing to urgent necessity or unavoidable accident, any decree is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration. Therefore, having failed to do so, the share of Lichhman has rightly devolved upon all the brothers and they have become owners to the extent of 1/4th share. In support of his contention, he relies upon the judgment of this Court in *Shailesh Kumar Vs. Mrs. Sandhya Gupta 2001(1) RCR (Civil) 441* and *Shishpal Vs. Vikram 1991 (1) RCR (Civil) 628*, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book. The facts as noticed above with regard to filing of the civil suit No.275 of 1994, decree dated 07.04.1994, filing of the Civil Suit No.227 of 1995, which was dismissed on 15.10.1999, setting aside of ex parte judgment and decree dated 16.12.2000 passed by the lower Appellate Court against the judgment and decree of the trial Court dated 15.10.1999 for

taking fresh decision, are not in dispute. The question which is now posed before this Court is whether the property qua share of Lichhman devolved upon him on account of death of his father was self-acquired property or not. Both the Courts below have been consistent and coherent with regard to his share, which has not been even disputed by the counsel appearing for the respondents-defendants. Now in the instant suit, Dharma along with Sultan son of Mara made a claim vis-à-vis the share of Lichhman, who was unmarried and issueless. When the aforementioned suit was filed, Lichhman was alive. He filed the written statement and did not object to the transfer of his share in favour of the plaintiffs i.e. Dharma and Sultan son of Mara. Whether such share would require registration as such right, according to the counsel for the respondents, was created for the first time.

The right in favour of the appellants-plaintiffs was created for the first time in view of the admission made by Lichhman, therefore, as per the observation of the lower Appellate Court, the decree so passed required registration within four months from the date of execution in view of provisions of Sections 24 and if not presented for registration till after the expiration of the time, Registrar may direct for registration in cases where the delay in presentation does not exceed four months in view of Section 25 of the Registration Act. For the sake of brevity, Section 24 and 25 of the Registration Act, 1908 are reproduced herein below:-

*“24. Documents executed by several persons at different times.
—Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.*

25. Provision where delay in presentation is unavoidable.—

(1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in [India] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

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The dates as noticed above i.e. filing of the suit on 03.04.1995, written statement by Lichhman on 4.4.1995, dismissal of the suit on 15.10.1999, ex parte judgment and decree passed by the lower Appellate Court on 16.12.2000, setting aside the ex parte judgment and decree on 31.07.2003 whereby the trial of the suit again commenced on 14.12.2006 and still the litigation going on, did not give any chance to the appellants to present the decree for registration as it was under challenge. It is a matter of record that during this period Lichhman died and legal heirs brought on record after the death of Lichhman on 07.04.1995 but no independent application was moved for setting up a different claim than one set up by Lichhman wherein he had conceded the claim of the plaintiffs. Since Lichhman Singh had acquired independent share on demise of his father, being self-acquired property, he could deal with the same in any way he wanted to. He could execute relinquishment deed or transfer deed amongst family members, which does not require registration. Be that as it may, during all this period the plaintiffs could not get any chance to present the

decree under challenge for registration as mentioned above. There is no dispute to the ratio decidendi culled out by this Court as referred to by the counsel for the respondents-defendants but in view of the observation made above, there was no occasion for the appellants-plaintiffs to present the decree for registration as the same remained under challenge even till date.

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.

Keeping in view of the aforementioned, I am of the view that the finding rendered by the lower Appellate Court is totally illegal and perverse as no evidence had been brought on record to show that signatures

coercion or threat.

Resultantly, the judgment and decree passed by the lower Appellate Court is set aside and the judgment and decree passed by the trial Court is upheld. The second appeal stands allowed. The appellants are at liberty to seek registration of the judgment and decree passed by the trial Court as per the provisions of Registration Act.

February 01, 2018

Pankaj*

(AMIT RAWAL)

JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No