

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 07.02.2018

1. RSA No. 4790 of 2011

Balbir Singh

..... Appellant

versus

Jaswinder Kaur and others

..... Respondents

2. RSA No. 4791 of 2011

Sukhwinder Kaur

.....Appellant

versus

Jaswinder Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Raj Kumar Gupta , Advocate for the appellant(s).

Mr.B.S.Saini, Advocate for respondents No. 1 and 2.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of above mentioned two Regular Second Appeals bearing Nos. 4790 and 4791 of 2011. The facts are being taken from RSA No. 4790 of 2011. The present RSA arose as a result of two civil suits i.e. Civil Suit No. 362 of 6.12.1999 titled as Jaswinder Kaur versus Sukhwinder Kaur and others (hereinafter referred to as the first suit) and other Civil Suit bearing No. 25T of 17.04.2000 titled as Balbir Singh v. Gian Kaur (now deceased and others)(hereinafter referred to as the second suit) which were consolidated and common judgment and decree was passed. In the first suit, Jaswinder Kaur claimed injunction against

Sukhwinder Kaur wife of Balbir Singh (who is plaintiff in the second suit) and against Jarnail Singh and others for forcible interference and dispossession. However, during the pendency of this suit vide amendment the suit was converted into suit for possession. It was stated in the suit that Jaswinder Kaur had become owner of the house in dispute by virtue of sale deed dated 29.11.1999 bearing No. 1442 executed by Gian Kaur which had forcibly been occupied by Jasbir Singh on the premise that Rattan Singh was the owner of the property and after his death the property devolved upon the heirs of Gian Kaur and she, on account of her own volition, transferred the same by registered sale deed *ibid* for a valuable consideration of Rs. 55,000/-. In second suit Balbir Singh plaintiff, whose wife Sukhwinder Kaur was arrayed as defendant No.1 in first suit, challenged the sale deed aforementioned on the ground that Gian Kaur did not have the title as the entire agricultural land was partitioned except the house which she had transferred by way of a family settlement dated 31.10.1996(Ex.D1) and had been in possession of the property, therefore, there was no occasion for dispossessing Jaswinder Kaur wife of Jasbir Singh. Apparently it was a dispute between the daughter-in-law and wives of Jasbir Singh and Balbir Singh sons of Gian Kaur, wife of Rattan Singh. The first suit was decreed whereas the second suit was dismissed. It is in this backdrop of the matter that the present Regular Second Appeals have been filed before this Court.

Mr.Raj Kujmar Gupta, learned counsel appearing for the appellant(s) submitted that in the second suit filed on behalf of appellant-plaintiff i.e. Balbir Singh, both the Courts have non-suited the plaintiff on the ground that the family settlement dated 31.10.1996 (Ex.D1) tantamounts to transferring the right of a property, valuing more than Rs. 100/-,

therefore , it required registration on account of the fact that plaintiff Balbir Singh did not have a pre-existing right but ignored the fact that the house and other agricultural land was owned by Rattan Singh who died intestate and the entire property devolved upon the legal heirs including the sons, the widow and daughters by way of natural succession. Gian Kaur during her life time had partitioned the agricultural land in favour of the other sons and the house in which appellant-plaintiff was staying, was thus given to him by virtue of family settlement Ex.D1. Witnesses of Ex.D1 proved the execution of the document, though Gian Kaur did not appear in the witness box to deny the aforementioned family settlement. Non appearance of plaintiff Balbir Singh would not have been fatal to the case, for Sukhwinder Kaur w/o Balbir Singh had put in appearance and proved the contents of the averments in the plaint. The property is situated within Lal Lakeer and, therefore, did not have any revenue record. All these factors have not been noticed by both the Courts below and thus the counsel prays for setting aside the concurrent findings of the Courts below. The plaintiff in the first suit and the defendant in the second suit did not prove the sale deed through examination of an attesting witness muchless passing of the sale consideration, therefore, being a sham transaction. It does not suffice the provisions of Section 54 of the Transfer of Property Act thus,, did not clothe Jaswinder Kaur a title or ownership. In support of his arguments he has relied upon a decision of this Court in the case of Radhey Sham Bhatia and others v. Smt. Rajni Soni widow of Surinder Soni and others, 2017(1) Civil Court Cases 502(P&H).

Per contra Mr.Saini, learned counsel appearing on behalf of

Jaswinder Kaur wife of Jasbir Singh stated that the findings of the Courts

below are perfect, legal and justified. Any document which confers a right for the first time either by way of relinquishment or by way of a family settlement or through any other instrument having a value of more than Rs. 100/- requires registration as per Section 17 of the Registration Act. As far as the non-examination of the witnesses of the sale deed is concerned, he has relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in the case of Ishwar Dass Jain (dead) through LRs v. Sohan Lal(dead) by LRs, 2000(1) Civil Court Cases 373(S.C.) and Smt. Hans Raji v. Yosodanand, 1996(1) Civil Court Cases 115 (S.C.), to contend that compliance of Section 68 of Evidence Act would only be an essential necessity in case of a will where the beneficiary of a will challenges the same or there is a dispute to the sale deed but not otherwise. The concurrent finding of fact cannot be set aside until there is a gross illegality which is conspicuously wanting in the present case and prays for dismissal of the appeals. He further stated that from a specific pleading in the plaint in second suit with regard to the agricultural land having been transferred by Gian Kaur in favour of defendant No.3 i.e. other brother, was emphatically denied as no evidence has been led to prove the same.

I have heard learned counsel for the parties and have perused the record with the help of their assistance.

There is force and merit in the submissions of Mr. Gupta and the reason is not only one but many. The Legislature caused amendment by incorporating Section 1-A in Section 17 of the Registration Act w.e.f. 24.09.2001. The provisions of sub-section 1-A of Section 17 of the Registration Act read as under;-

“(1A) The documents containing contracts to transfer for

consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.”

(i) The family settlement or Ikraarnama is dated 31.10.1996, Ex.D1. This was executed prior in time when there was no requirement of registration of the document; (ii) If at all Gian Kaur had not executed the document, no body prevented her from appearing in the witness box and deny the same. Her absence in the Court is a clincher with regard to the execution of the document this is what the findings of the Courts below have been. Once Gian Kaur who had become the absolute owner of the property purportedly in view of the provisions of Section 14(1) of the Hindu Succession Act, she had dealt with the property in view of the acknowledgment dated 31.10.1996 and, therefore, did not have any right and title in the property and could not execute sale deed dated 29.11.1999 in favour of Jaswinder Kaur. It is a common practice amongst the family members for having agreed to a consensus and thereafter volte face. The factum of registration of a document has already been debated before the Hon'ble Supreme Court in Kale and others v. Deputy Director of Consolidation and others, AIR 1976 SC 807 where it has been held that if a party to the settlement is having antecedent title, such a document conferring a right would not be for the first time and, therefore, did not require any registration. Balbir Singh is son of Rattan Singh though no documentary evidence has come on record that he has executed any testamentary document vide which the entire property has

fallen to the share of Gian Kaur. Otherwise in the absence of that document the property had been devolved upon all the legal heirs by way of natural succession. But once the siblings have acknowledged ownership of Gian Kaur and did not challenge the family settlement dated 31.10.1996, even not by setting up a counter claim in a second suit except for claiming possession on the basis of title, in my view the simpliciter suit for possession was not maintainable. Thus, there is a gross illegality and perversity in the findings of the Courts below. There is no dispute with regard to the ratio decidendi of the judgments cited by Mr.Saini that in case of a registered sale deed there is no requirement of attesting witness but once it has been challenged by appellant-plaintiff nothing prevented the plaintiff in the first suit and defendant in the second suit to prove the same. Thus, they were afraid that the truth may not surface.

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 V/s. 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 substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **“Kulwant Kaur and others V/s. 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.

In my opinion the judgments and decree of the Courts below suffer from illegality and perversity and are liable to be set aside. Therefore, the first suit is dismissed and second suit is decreed. Decree sheet be drawn accordingly.

Both the Regular Second Appeals are allowed.

(AMIT RAWAL)
JUDGE

February 07, 2018

sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No