

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

RSA No.4770 of 2012 (O&M)

Date of Decision.27.04.2018

Mohinder Singh

.....Appellant

Vs

Sanjeev Kumar and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Mamli, Advocate
for the appellant.

Mr. Munish Mittal, Advocate
for respondent No.1 to 3.

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AMIT RAWAL J.(ORAL)

C.M.No.13277-C of 2012

For the reasons stated in the application, delay of 51 days in
filing the appeal is condoned.

Application is allowed.

RSA No.4770 of 2012

The appellants-defendants are in regular second appeal against the judgment and decree rendered by the lower Appellate Court dated 10.05.2012 whereby the judgment and decree dated 18.09.2009 of the trial Court giving liberty to the plaintiffs to recover the proportionate sale consideration qua 1 kanal 12 marlas from the estate, if any, left behind by Jug Lal has been reversed and the suit for declaration decreed to the effect that the plaintiffs are owners in joint possession of land out of total share of Mohinder Singh son of Jug Lal, one of the LRs of Jug Lal, as per latest jamabandi for the year 2005-2006.

declaration that they are entitled to be compensated by defendant No.1(a) to (g) by transfer of a share of 1 kanal 12 marlas i.e. 32/1728 share out of the total share of the defendants from adjoining land in Khewat No.199/175, Khatoni No.251, Rect. No.80, Khasra No.25(7-4), Rect. No.86, Khasra No.5 (7-4), 6(7-4) situated in village Garhi Birbal on the premise that by virtue of sale deed dated 28.05.1987, the plaintiffs had purchased the suit land measuring 29 kanals 12 marlas from Jug Lal, vendor. Mutation in respect of the aforementioned suit property was effected in 1978 but the same was not implemented. The plaintiffs moved an application before the Deputy Commissioner, Karnal for mutation but it came to their knowledge that there was shortfall of the aforementioned land i.e. 1 kanal 12 marlas whereby the vendor had actually sold 4 kanals 8 marlas. It is in that background, the suit aforementioned was filed.

The defendants filed their written statement taking customary pleas of maintainability. On merits, defendant No.1 denied all the averments made in the plaint. Defendant No.2, being predecessor-in-interest took the plea of bona fide purchaser.

Since the parties were at variance, the trial Court framed as many as eight issues including the issue of relief. The plaintiffs in support of their averments made in the plaint examined plaintiff No.2 Bhoop Singh as PW1 and Gurdial Singh as PW2 and tendered documents Ex.P1 to Ex.P14 and Mark A, copy of application submitted to DC, Karnal. On the other hand, defendant-Charan Singh examined himself as DW1 and Attar Singh, Kanungo as DW2 and tendered documents Ex.D1 to D4 and Mark A, sale deed.

On the preponderance of evidence, the trial Court though

proportionate sale consideration qua 1 kanal 12 marlas from the estate, if any, left behind by late Jug Lal. The aforementioned judgment and decree was assailed only by the plaintiffs, which has been reversed and the suit has been decreed in toto.

Mr. R.S. Mamli, learned counsel appearing on behalf of the appellants submitted that in fact at the time of execution of the sale deed in the year 1987, Jug Lal was not owner of the land as 1 kanal 12 marlas had already been sold before the sale of 1987. Jug Lal during the pendency of the suit had died and appellants-defendants succeeded to his estate with regard to other piece of land. The suit of the appellants-plaintiffs was not within the period of limitation as no explanation has come forward as to how the cause of action arose only in the year 2004 by coining a story of getting the mutation entries corrected in the year 2000. The suit was hopelessly barred by limitation. The decree of the trial Court is perfectly legal and justified and conformed to the principles of equality.

He on instructions from his client is willing to return the money *vis-à-vis* 1 kanal 12 marlas along with interest but assail the finding of the lower Appellate Court on the ground that the same is not maintainable, for, the plaintiffs had lost the right to seek the aforementioned shortfall by efflux of time.

Per contra, Mr. Munish Mittal, learned counsel appearing on behalf of respondent No.1 to 3 submitted that the decree of the lower Appellate Court is perfectly legal and justified and does not call for interference. There is no limitation for claiming title. The cause of action only accrues when the respondents-plaintiffs applied for mutation and therefore, came to know that there was a shortfall of 1 kanal 12 marlas. In

the respondents-plaintiffs were put in possession of the entire area. The lower Appellate Court realized the aforementioned fact, thus, urges this Court for upholding the judgment and decree under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr.Mamli, for, subsequent khasra girdawaries showing that respondents-plaintiffs were actually put in possession of 1 kanal 12 marlas has not seen the light of the day. In my view, the respondents-plaintiffs have failed to place on record any revenue record with regard to possession.

The alleged story of submitting application to the Deputy Commissioner for rectifying the mutation in the year 2000 was coined only to bring the suit within the period of limitation as the suit was filed in the year 2004 after a period of three years. The lower Appellate Court has not appreciated all these facts. It was too late to put the clock back and ask the successors-in-interest of Jug Lal to execute the sale deed *vis-à-vis* the land measuring 1 kanal 12 marlas from their own share. As per sub-section 4 of Section 6 of the Hindu Succession Act, which has been amended in the year 2005, the son would not be liable to discharge obligation of the father.

The reasoning assigned by the lower Appellate Court also does not withstand the touchstone of equity, for, it had not noticed the fact that Jug Lal did not have title in respect of share at the time of sale deed executed in the year 1987 for remaining area of land measuring 1 kanal 12 marlas in specific khewat and khasra number had already been sold in 1978 to defendant No.2. The sale deed was, therefore, valid only for 4 kanals 8 marlas, thus, there is abdication, illegality and perversity.

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.

In view of the aforementioned, the judgment and decree of the lower Appellate Court is set aside and that of the trial Court is restored. However, I put a caveat that the appellants-defendants shall return the amount with regard to 1 kanal 12 marlas as reflected in the sale deed along with interest @9% from the date of execution of the sale deed till the date of realization. The second appeal stands allowed.

(AMIT RAWAL)
JUDGE

April 27, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No