

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

**RSA No. 25 of 2013 (O & M)
Date of Decision:-06.2.2018**

Sukhdev singh and others

...Appellants

Versus

Madan Lal and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ramneek Vasudev, Advocate
for the appellants.

Mr. C.L. Premy, Advocate
for the respondents.

AMIT RAWAL J.(Oral)

CM No.11798-C of 2016

Learned counsel for the applicant prays for withdrawal of the present application.

CM stands dismissed as withdrawn.

RSA No.25 of 2013

The appellants-defendants (respondents in the lower Appellate Court) are in appeal against the judgment and decree dated 18.9.2012 passed by the lower Appellate Court whereby in a suit for declaration before the lower Court, the plaintiffs had challenged the sale deeds dated

1.4.1996, 3.9.1996, 4.6.1996, in favour of the appellant-defendants, has been decreed.

Mr. Ramneek Vasudev, learned counsel appearing on behalf of appellant-defendant submitted that the respondent-plaintiff in the year 2002 instituted the suit claiming the ownership on the property on the premise that the sale deeds, aforementioned, were executed by their father Jaswant Rai by taking the permission dated 15.3.1996 from the Court but the said permission was only for the welfare of the plaintiffs whereby the sale consideration of the aforementioned sale deeds was never utilised for their well being which was ultimately withdrawn on 17.3.1997 in pursuance to the application dated 18.10.1996 moved by the mother whereby Jaswant Rai (since deceased) was restrained from alienating the suit property. The trial Court on the preponderance of the evidence dismissed the suit of the plaintiff by holding that the appellant-defendant was the bona fide purchaser but the lower Appellate Court reversed the findings that it was incumbent upon the defendant to prove that they purchased the suit property and well aware of the fact that it was for the welfare of the plaintiffs. He submitted that the onus of proving their well being or execution of the sale deeds laid heavily upon the plaintiffs, which they failed to discharge. Rather in lieu of the sale consideration received upon executing of the sale deeds, the land measuring 2 Kanal 9 Marlas as per the jamabandi for the year 1993-94 (Ex.D6) mutated vide mutation No.1774 was purchased in the name of the plaintiffs. The appellant-defendant conducted all reasonable inquiries at the time of purchasing the property

and therefore, they are protected as per the provisions of Section 41 of the Transfer of Property Act. The findings of the lower Appellate Court, thus, suffers from illegality and perversity by wrongly placing the burden upon the defendant.

Mr. C.L. Premy, Advocate learned counsel appearing on behalf of the respondent-plaintiff supported the findings rendered by the lower Appellate Court by holding that the sale deeds Exhibits P1, P2 and P3 were for a valuable consideration but the same was not utilized for the welfare of the plaintiffs as the permission granted by the Court was only for the welfare of the plaintiffs. The interest of the minors had not been kept intact by their father, who was restrained vide order dated 18.10.1996 and ultimately the permission granted by the Court was withdrawn. So, anything done during the interregnum was null and void and urges this Court for upholding the judgment and decree of lower Appellate Court.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is merit in the submission of Mr. Vasudeva. The factum of land having been purchased measuring 2K-9M in favour of the plaintiff by Jaswant Rai after execution of the sale deeds aforementioned dated 2.4.1996, 3.9.1996, 4.6.1996 is not in dispute muchless the permission dated 15.3.1996 granted by the trial Court in favour of Jaswant Rai. The restrained order dated 18.10.1996 would not help the plaintiffs as by that time the suit property had already been alienated. The permission was withdrawn on 17.3.1997 whereas the suit was filed in the year 2002, it was incumbent upon the plaintiffs to establish

on record whether their well being was taken care of by their father Jaswant Rai or not, through they have acquired the title in the property by virtue of sale executed by their grand father. It is in this background the property was transferred in their names. The onus as per provisions of Section 101 of the India Evidence Act has not been discharged. It is a clear case filed by one parent viz a viz the other parent, which in my view has rightly been discarded by the trial Court.

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 the Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitution 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 as 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 5 of 7 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."

Keeping in view the aforementioned, the judgment and decree of the lower Appellate Court is not sustainable and are hereby set aside.

Resultantly, the appeal stands allowed.

February 06, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No