

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

**RSA No.307 of 2013 (O&M)**

**Date of decision:07.05.2018**

Sonia Sachdeva @ Bharti Sachdeva

... Appellant

Vs.

Saroj Bala @ Sudesh Kumari and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. K.S.Chahal, Advocate  
for the appellant.

Mr. Jagdish Manchanda, Advocate  
for respondents No.1 and 2.

Mr. Amit Sharma, Advocate  
for respondent No.3.

**AMIT RAWAL J. (Oral)**

The appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, suit claiming declaration that she was owner in possession of suit property mentioned as serial numbers (a), (b) and (c) of head note of plaint to the extent of 1/3<sup>rd</sup> share; with a further prayer for separate possession by way of partition of 1/3<sup>rd</sup> share out of suit properties, has been dismissed by the trial Court and upheld by the Lower Appellate Court.

The suit was contested by defendants No.1 and 2 on the premise that suit was not maintainable as it was barred by law under Order 2

Rule 2 CPC read with Section 11 CPC and also under Order 23 Rule 1(4) CPC, for, similarly, the suit filed against defendants was dismissed as withdrawn. The plaintiff had not come to the Court with clean hands. The plaintiff has no concern with the family and property of Murari Lal as she was adopted by Brij Lal.

Defendant No.3 has also filed separate written statement stating therein that she has purchased house no.13, Adarsh Nagar, Balongi comprised in customer no.16//2(8-0) measuring 0 kanal 5 marlas from defendants no.1 and 2, vide sale deed dated 04.06.2003.

Since the parties were at variance, the trial Court framed the following issues including the additional issue:-

“1. Whether plaintiff is entitled to declaration as prayed for?  
OPP

2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

3. Whether the suit is not maintainable? OPD

4. Whether the suit is time barred as alleged in a written statement? OPD

5. Relief.

**Additional issue**

1-A Whether the GPA dated 14.6.2001 and sale deed on the basis of the GPA in favour of defendant no.3 is null and void and is liable to be set aside? OPP”

The appellant-plaintiff examined Radhey Sham as PW1, Rajpal Sharma as PW1/A, Krishna Devi as PW1/A, Sunil Pandit as PW3 and plaintiff Sonia Sachdeva herself as PW4 and brought on record the documentary evidence, i.e., Ex.P1, Ex.P2 and Ex.PW2/A.

On the other hand, defendants examined Kamlesh Kumar as DW1, Sudesh Sachdeva as DW2, Pankaj Sachdeva as DW3 and brought on record the documentary evidence, i.e., from Ex.D1 to Ex.D25.

The trial Court on the basis of evidence dismissed the suit on the premise that plaintiff failed to prove on record that Murari Lal was owner of the property and so was the findings of the Lower Appellate Court.

Mr. K.S.Chahal, learned counsel for the appellant-plaintiff submits that there was a categoric admission of defendant no.2-Pankaj Sachdeva, in the cross-examination, that property was owned by father of Murari Lal and on his demise, the property was inherited by defendants No.1 and 2. No explanation has come on record as to why the name of appellant-plaintiff, i.e., daughter has not been mentioned, for, finding with regard to adoption of the plaintiff by Brij Lal has been rendered against the defendants. As regards the other property, the plaintiff had not been able to prove the ownership by staking any claim. The sale deed had been executed during the pendency of the suit in favour of defendant No.3 on 14.06.2001, whereas, the suit was filed on 19.07.2000, therefore, it was hit by doctrine akin to lis pendence and thus, urges this Court for setting aside the judgments and decrees under challenge.

Mr. Jagdish Manchanda, learned counsel appearing on behalf of respondents No.1 and 2 submits that in the absence of challenge to the findings rendered by the Courts below regarding adoption, the respondents can always take the aid of Order 41 Rule 33 CPC, for, the defendants proved on record the adoption of plaintiff by Brij Lal. There is no illegality and perversity in the impugned judgments and decrees under challenge, for, the plaintiff had lost the right in the aforementioned property since birth.

Similar arguments have been adopted by Mr. Amit Sharma, learned counsel for respondent No.3.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is force and merit in the submissions of Mr. Chahal vis-a-vis stake of 1/3<sup>rd</sup> share in the aforementioned property.

The Court is hereby called upon to decide the question with regard to declaration of granting status of 1/3<sup>rd</sup> share in the property belonging to Murari Lal. It would be apt to reproduce the cross-examination of Pankaj Sachdeva which reads as under:-

*“My father owned property in village Balongi and Punchkula. The house at Balongi has been sold by us for a sum of Rs.60,000/- about 2-3 years back. I do not remember the name of vendee. Myself and my mother had sold that house. It was mutated in our name after the death of my father was stop the mutation was sanctioned in our name after 2-3 years from the death of my father. My father did not execute any Will in my*

*favour. I do not know if any document was executed in the name of my mother will stop the mutation was sanctioned in the name of my mother and myself. It was sanctioned on the basis of natural succession. This mutation was got entered by me. Sonia (plaintiff) was not called at the time as she was not required. We have not told the Patwari that Sony was also my sister, because she is not my sister are all. I did not disclose the Halqa Patwari that the suit qua that property is pending in the Court and similarly nothing was disclosed to AC 2<sup>nd</sup> Grade at the time of sanctioning of mutation.*

*He further stated 'my father was allotted the flat by the society in respect of which my father was a member. Name of society is Youngman Colony Group Housing Society Ltd. Sector 20 Panchkula'."*

From the perusal of aforementioned cross-examination of Pankaj Sachdeva, it has come on record that property situated at Balongi was in the name of Murari Lal and on his demise, mutation in question was mutated in the name of Pankaj Sachdeva and his mother. No explanation had come on record as to why plaintiff-Sonia Sachdeva had not been given 1/3<sup>rd</sup> share being Class-I heir of Murari Lal, for, finding with regard to adoption of the plaintiff by Brij Lal had been rendered against the defendants. The defendants cannot be permitted to raise a plea under Order 41 Rule 33 CPC as no evidence has been placed on record enabling this Court to form a different opinion than the one arrive at by the Courts below.

In my view, the Courts below have abdicated in not referring to cross-examination of Pankaj Sachdeva as the admission need not be supported by any other evidence, for, the plaintiff, in my view, has discharged the onus by ascertaining the truth in cross-examination of defendant no.2, thus, there is abdication and perversity in the findings under challenge.

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 observations, judgments and decrees of the trial Court and lower Appellate Court are modified to the extent that plaintiff is accorded declaration of 1/3<sup>rd</sup> share in the property aforementioned. The revenue officer is directed to get the mutation affected in the name of plaintiff, defendants No.1 and 2 to the extent of 1/3<sup>rd</sup> share. Liberty is granted to the appellant-plaintiff to seek partition of the property, in accordance with law. The plea of bonafide purchaser is also declined, for, the property has been purchased during the pendency of the suit. Respondent No.3 is also at liberty to buy 1/3<sup>rd</sup> share in the property.

Accordingly, the appeal stands allowed.

(AMIT RAWAL)  
JUDGE

May 07, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No