

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

**RSA No. 4664 of 2013 (O & M)
Date of Decision:-19.2.2018**

Baljinder Singh and others

...Appellants

Versus

Manjinder Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Pawan Bansal, Advocate
for the appellants.

Mr. G.S. Jaswal, Advocate
for respondents No.1,3 and 4.

AMIT RAWAL J.(Oral)

The appellants i.e. the LR's of plaintiff Roop Singh are in appeal against the judgments and decrees of both the Courts below whereby suit seeking the following relief has been dismissed :-

“Suit for declaration to the effect that the plaintiff is joint owner and in possession of the properties detailed as under :-

- A. 20K-19M, being 3/7 share and Southern portion of the compact measuring 48K-18M, comprising Khata No.310/350/1 Rect. No.7 Killa Nos.6/2,15,16/1,16/2, 25 Rect. No.16, Killa Nos.5, 6, 15 ;

- B. 16K-17M, being 3/7 share and Western portion of the compact measuring 39K-6M, comprising Khata No.310\351\1, 351 Rect. No.39 Killa No.1 min(2-0), 2\1\1 2\1\2, 10\1 min(4-0), 11\2 min (2-0), 9\2, 12\1, Rect. No.30 Killa No.22\2, 21\2, Rect. No.39 Killa No.1 min(5-1), 10\1 min(2-0), 11\2 min(3-12);
- C. 0K-10M, being 3/7 share and Western portion of the plot 1K-11M, comprising Khata No.311\352, Khasra No.351, which is shown as RED in the site plan attached with the plaint and bounded as under :-
- North : Pucca Road
- South : Mistri Kartar Singh
- East : Remaining portion of Khasra No.351 of defendants.
- West : Plot of Dhanna Singh.
- D. 0K-1M-6 Sarsahi being 3/7 share and Southern portion of Garha Khad measuring 0K-4M, comprising Khata No.30\350, Khasra No.374; as entered in the jamabandi for the year 1996-97, situated in the area of village Sidhwan Bet-I, Tehsil Jagraon, District Ludhiana, on the basis of a written compromise dated 16.2.1983 entered into between the parties and annexed as Ex.C-1 in Civil Suit No.495 of 1989, titled Chanan Singh vs. Roop Singh and others, after setting aside the alleged Will dated 26.6.1989 alleged to have been executed by Sh. Chanan Singh in favour of defendants No.1 to 4 and also after setting aside the Mutation No.5323 sanctioned on the basis of the alleged Will the same being illegal, void,

ineffective, incorporative, fraudulent, against the spirit of written compromise dated 16.2.1983 and not binding on the ownership rights of the plaintiff over the suit land, with a consequential relief of permanent injunction restraining the defendants No.1 to 4 from alienating by way of sale, mortgage, gift, exchange or transfer in any manner any portion of the suit land to any third person and also from dispossessing the plaintiff from the suit land illegally and forcibly and from making any change in its by raising construction etc. in it.

OR

In the alternative suit for joint possession of the suit properties as fully detailed and described above on the basis of valid written compromise dated 16.2.1983 and after setting aside the alleged Will dated 26.6.1989 and mutation No.5323 as referred above; on the basis of oral and documentary evidence.”

Roop Singh-plaintiff (since deceased) instituted the suit, on 24.4.2002, for the aforementioned relief, on the premises that Chanan Singh was the owner of the land described therein by claiming 3/7th share and a compromise dated 6.2.1993 was entered into in a Civil Suit bearing No.495 of 1989 titled as 'Chanan Singh vs. Roop Singh and another' whereby the property was divided in equal shares amongst his sons i.e. Roop Singh on one side and Nahar Singh on the other side. Chanan Singh died on 4.6.1991. During the pendency of the aforementioned suit his LRs were brought on record and a compromise was arrived at, in the presence of the legal representatives. The mutation bearing No.5323 dated 10.3.1993 in

respect of the property was sanctioned in favour of the respondents-defendants, whereby a Will dated 26.6.1989 executed by Chanan Singh bequeathing the entire share in favour of Nahar Singh (since dead) was set up. In this background suit for declaration for setting aside the mutation and the Will and according to status of joint ownership was instituted.

The defendants contested the suit by taking the objections of maintainability, barred by Order 2 Rule 2 CPC, Order 23 Rule 1(4) CPC and for setting up the Will aforementioned, which according to them was not objected to by Roop Singh as he then was before the Assistant Collector when the mutation proceedings were initiated and sanctioned in favour of the defendants.

From the pleadings, the trial Court framed the following issues :-

- “1. Whether the suit property detailed and described in para No.1 of the plaint is ancestral joint Hindu Co-parcenary property which was inherited by Chanan Singh from his forefather as alleged ? If so, its effect ? OPP
2. Whether Chanan Singh executed a legal and valid Will on 26.6.1989 in favour of defendants No.1 to 4 as alleged ? If so, its effect? OPD
3. Whether after the death of Chanan Singh, a written compromise was effected between the parties on 16.2.1993, as alleged ? If so, its effect? OPP
4. If issues No.1 and 3 are proved whether the plaintiff is entitled to relief of declaration as to his being joint owner and in possession of the properties detailed and described in head note A to D of the plaint ? OPP
5. Whether plaintiff is entitled to relief of permanent

injunction as prayed for ? OPP

6. Whether suit of the ploaintiff is not maintainable in the present form ? OPD
7. Whether suit is barred under Order 23 Rule 1, Sub Rule 4 CPC? OPD
8. Whether the suit of the plaintiff is barred under Order 2 Rule 2 CPC?
9. Whether suit of plaintiff is within time ? OPP
10. Relief.”

Plaintiff Roop Singh stepped in witness box as PW1 and further examined Preet Harkishan Singh Bedi, Draftsman as PW2 and placed on record the site plan as Ex.P1, copy of jamabandi for the year 1996-97 as Ex.P2, certified copy of order dated 16.2.1993 as Ex.P3, Certified copy of statement of Manjinder Singh etc. dated 16.2.1993 as Ex.P4, certified copy of compromise deed dated 16.2.1993 as Ex.P6 and photostat copy of death certificate of Chanan Singh Mark-A. In rebuttal evidence, PW3 Varun Gagneja, Handwriting and Finger Print Expert brought on record the negatives, site plan Ex.P7 to Ex.P9, Aksh Sajra Ex.P10, one another attested copy of Ex.P11, copy of jamabandi Ex.P12 and photostat copy of Aksh Sajra Mark-A, copy of jamabandi for the year 1945-46 in Urdu Ex.P13, attested copy of the same in Punjabi translation is Ex.P-13/A, attested copy of jamabandi for the year 1956-57 in Urdu as Ex.P14 and its attested copy in Punjabi translation is Ex.P14/A, attested copy of Khatauni Pamais in Urdu is Ex.P15 and its Punjabi translation is Ex.P15/A, attested copy of Naksa Haqdar jamabandi for the year 1945-46 in Urdu Ex.P16 and its Punjabi translation is Ex.P16/A, copy of mutation in

Urdu script Ex.P17 and its Punjabi translation is Ex.P17/A.

On the other hand, defendants examined Iqbal Singh, Lambardar as DW1, Madho Singh as DW2, Manjinder Singh (defendant No.1) himself stepped into witness box as DW3 and tendered into evidence the original Will dated 26.6.1989 as Ex.D1, endorsement on the same Ex.D2, entry made in the register of Deed Writer Ex.D3, certified copy of order dated 26.8.1998 Ex.D4, certified copy of plaint of case titled 'Chanan Singh vs. Roop Singh' Ex.D5, certified copy of amended plaint of that suit Ex.D6, certified copy of written statement of that suit Ex.D7, certified copy of mutation deed 10.3.1993 Ex.D8, copy of jamabandi for the year 1971-72 Ex.D9, copy of jamabandi for the year 1986-87 Ex.D10 and copy of jamabandi for the year 1996-97 Ex.D11.

The trial Court by relying on the contents of the Will and the order dated 10.3.1993 dismissed the suit. The appeal laid before the learned lower Appellate Court also met with the same fate. In this background the present regular second appeal has been filed before this Court.

Mr. Pawan Bansal, Advocate learned counsel appearing on behalf of the appellants submitted that the judgments and decrees of both the Courts below are erroneous muchless illegal. The Will is of 26.6.1989 whereas the compromise is 16.2.1993. The subsequent document should have been considered but the focus of the Court was on the Will. The mutation dated 10.3.1993 Ex.D8 was challenged in the suit. As it did not confer title, therefore, there was no limitation for claiming the title in the suit property. The order dated 10.3.1993 passed by the Revenue Court

noticing the presence of Roop Singh and his no objection qua the mutation regarding transfer of the property left by Chanan Singh, in favour of defendant was neither here nor there and for such no separate statement was recorded. All these points have not been taken into consideration and therefore, there is aberration.

The defendants did not deny the compromise deed 16.2.1993 and the order passed thereon Ex.P3 and even the statement of one of the LRs of Nahar Singh i.e. Manjinder Singh dated 16.2.1993 (Ex.P4),, therefore, there was no occasion for the Courts below to lay emphasis on the Will resulting into erroneous and perverse findings.

Per contra, Mr. Jaiswal, Advocate learned counsel appearing on behalf of defendants submitted that genesis of the findings of the Courts below had been on the order dated 10.3.1993 (Ex.D8) which showed that Roop Singh did not object to the Will dated 26.6.1989 whereby Chanan Singh had bequeathed entire property in favour of Nahar Singh (since deceased) being represented by LRs. It is the Will which impacted the compromise. The compromise could not be looked into and urges this Court for upholding the findings under challenge.

The Will has been proved as per the provisions of Section 68 of the Evidence Act much less Section 63(c) of the Indian Succession Act. Chanan Singh died on 4.6.1991 during the pendency of the previous suit bearing No. 495 of 1989. The suit was dismissed as withdrawn. The compromise was not made part of the decree and thus it could not be looked into for the adjudication and rightly has been discarded by both the Courts

below. He further submitted that the suit was barred by the limitation as the order dated 10.3.1993 could have been challenged within three years whereas the suit was filed in the year 2002.

I have heard learned counsel for the parties and appraised the paper book.

The facts noticed above i.e. the compromise dated 16.2.1993 and execution of the Will and the order passed, muchless, the statement of Manjinder Singh are not in dispute. Two questions are posed before this Court, firstly “whether the suit of the appellants-plaintiff in challenging the order dated 10.3.1993 (Ex.D8) resulting into passing the mutation was within a period of limitation” and secondly; “whether in pursuance to the compromise the Will dated 26.6.1989 which is prior to the period of compromise can be looked into for the adjudication of the lis or not”. None of the parties disputed the signatures on the compromise of LRs of Chanan Singh. The suit bearing No. 495 of 1989 title as 'Chanan Singh vs. Roop Singh and another' which was pending adjudication and decided post the death of Chanan Singh in essence the LRs of Chanan Singh were brought on record, wherein Manjinder Singh also suffered a statement. Manjinder Singh is none else son of Nahar Singh son of Chanan Singh. He did not dispute the aforesaid compromise.

Therefore, in view of the compromise dated 16.2.1993 the contents of the Will could not be looked into. The Will could not have been pressed being a document prior to the compromise. Had the Will being of a subsequent period containing the reference of the compromise,

position would have been different.

There is no limitation to claim a title, in fact the estate of the Chanan Singh devolved upon, both the sons i.e. Roop Singh and Nahar in equal shares, this is what appellants claimed. All these facts in my view have not been looked into by the Courts below but discarded the compromise and the order passed, muchless, the statement of Manjinder Singh, therefore, there is 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 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, or the 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 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.

Resultantly, the appeal is allowed and the judgments and decrees of both the Courts below are set aside. The suit of the appellants is decreed. Decree-sheet is ordered to be passed accordingly.

February 19, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No