

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

Date of decision : 12.11.2018

1. RSA No. 4796 of 2016(O&M)

Dilbagh Singh and others

..... Appellants

versus

Joginder Kaur and others

..... Respondents

2. RSA No. 1960 of 2017(O&M)

Joginder Kaur and another

..... Appellants

versus

Jaswant Kaur and others

..... Respondents

3. RSA No. 5782 of 2016(O&M)

**Jaswant Kaur(since deceased) through LRs
Joginder Kaur and others**

..... Appellants

versus

Jagtar Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

**Present: Mr. Harsh Aggarwal, Advocate
for the appellants(in RSA-4796-2016).**

**Mr.Premjit Kalia, Advocate
for the appellants (in RSA-1960-2017 & RSA-5782-2016)
and for respondents(in RSA-4796-2016)**

AMIT RAWAL, J. (ORAL)

CM Nos. 4664-C-2017 & 4665-C-2017 in RSA-1960-2017

The above mentioned two applications have been filed for condonation of delay of 91 days in refiling and 11 days in filing the appeal.

For the reasons mentioned in the applications, the same are allowed. Delay of 91 days in refiling and 11 days in filing the appeal is condoned.

CM Nos. 15167-C-2016 & 15168-C-2016 in RSA-5782-2016

CM No.15167-C-2016 is an application seeking permission to make up the deficiency in the Court fee.

For the reasons recorded in the application, the same is allowed and deficiency in the Court fee is made good.

CM No.15168-C-2016 is an application for condonation of delay of 26 days in filing the appeal.

For the reasons recorded in the application, the same is allowed. Delay of 26 days in filing the appeal is condoned.

RSA Nos. 4796-2016, 1960-2017 & 5782-2016

Notice of motion.

Mr.Premjit Kalia, Advocate, who is present in Court(on behalf of appellants in RSA Nos. 1960 of 2017 and 5782 of 2016), accepts notice on behalf of the respondents in RSA No. 4796 of 2016.

This order of mine shall dispose of three Regular Second Appeals. RSA No. 4796-2016 titled as Dilbagh Singh and others v. Joginder Kaur and others as well as RSA No. 1960 of 2017, Joginder Kaur and another vs. Jaswant Kaur and others have arisen out of a decision rendered in Civil Suit No. 50 of 2011 titled as Joginder Kaur and others v. Jaswant

Kaur and others wherein suit laying challenge to the sale deed dated 30.05.2011 executed by Jaswant Kaur (since deceased) in favour of subsequent vendees i.e. appellants in RSA No. 4796 of 2016 was partly decreed whereby three sale deeds of the same date were set aside and challenge to the mortgage deeds was negated. Two appeals by both the respective parties were filed. Same were dismissed. RSA No. 5782 of 2016 titled as Jaswant Kaur(since deceased) through LRs Joginder Kaur and others v. Jagtar Singh and others arises out of Civil Suit No. 161 of 2009 titled as Jaswant Kaur(since deceased) through LRs Joginder Kaur and others v. Jagtar Singh and others which was dismissed by the trial Court and affirmed by the Lower Appellate Court. Since common questions of fact and law muchless the suit property are the same, therefore, all the three appeals are being disposed of by this common order.

Sadhu Singh was the owner of the property. He had two wives, one Kartar Kaur and the other Jaswant Kaur. Out of the loins with Kartar Kaur six daughters i.e. the plaintiffs in Civil Suit No. 50 of 2011 were born. Sadhu Singh during his life time executed a registered will on 09.11.1966 whereby out of the total land holding of 320 kanals approximately gave ownership/bequeathed 105 kanals 7 marlas in favour of Jaswant Kaur by imposing impediment that she will not sell the land. Sadhu Singh died in the year 1967. As per the subject matter of the Will, land measuring 105 kanals 7 marlas was transferred/mutated in favour of Jaswant Kaur vide mutation No. 1076 dated 01.11.1968. Till filing of the suit in 2011 there was no dispute. The dispute arose only when Jaswant Kaur sold 90 kanals 12 marlas of land vide three sale deeds dated 30.05.2011 in favour of the

Suit No. 50 of 2011 was filed challenging the aforementioned sale deeds and also the mortgage deeds dated 05.06.2009 allegedly executed by Jaswant Kaur in favour of the appellants who acquired right by virtue of sale deeds ibid. The Trial Court, as indicated above, partly decreed the suit setting aside the sale deeds and denied the relief with regard to the mortgage deeds. Two appeals, one on behalf of the plaintiffs in Civil Suit No. 50 of 2011 and the other on behalf of the subsequent vendees-defendants in that very suit, were filed. Both were dismissed. In these circumstances, as indicated above, two RSAs have been filed. However, in other suit again challenge was laid by daughters of Kartar Kaur challenging the mortgage deeds which has been dismissed by both the Courts.

The substantial question of law which has arisen for adjudication of the lis is “whether the recital in the registered Will barring Jawsant Kaur not to sell the land would nullify the sale deeds executed by her during her life time.” The translated copy of the Will has been annexed as Annexure A-1 (Ex.D-1) which reads as follows:-

“ I am Sadhu Singh Jathedar aged about 75 years s/o Jeevan Singh s/o Gurdit Singh, Jatt, Village Tharu, Teh. Tarn Taran, Distt. Amritsar. I am exclusive owner in possession of land of every type situated in village Tharu, Tehsil Tarn Taran. I am at advanced age. There is no certainty of life as to when it would come to an end. I do not want that after my death any dispute should arise regarding my property and it should suffer any loss. My wife is Jaswant Kaur. There is no issue from the said wedlock. I want that after my death, she should not suffer any inconvenience. She serves me. I am very happy with her. Therefore, with my consent and happiness, I want to give only Khasra nos. 396(9-7), 403(8-0), 404(8-0), 423(8-0), 424(8-0), 421(8-0), 269(8-0), 426(8-0), 427(8-0), 428(8-0), 254(8-0),

450(8-0), 449(8-0) total measuring 105K 7M out of the total land to her. Therefore, in my full senses and conscious, I execute this Will of above said land in favour of my wife Jaswant Kaur. She would be the owner of the above said after my death. Nobody else would have any concern with the above said land. In case anybody files a suit, the same would be false keeping in view my this Will. My wife would not sell the above said land.

This Will has been executed in favour of my wife Jaswant Kaur so that it may remain as proof. I will be the owner till I am alive. Dated 9.11.1966. Sd/- Sulakhan Singh Lahri, Tarn Taran. R.No.835 received Rs.2/-. Sd/- Executant Sadhu Singh. Witness Sd/- Amarjit Singh s/o Hari Singh, Jatt Ex-Sarpanch, Tharu. Witness Sd/- Sarpanch Tara Singh s/o Khushal Singh Nurdi. Sd/- Resham Singh SR.”

Concededly Sadhu Singh was the owner of 320 kanals i.e. 40 acres approximately out of which only 105 kanals 7 marlas was bequeathed in favour of Jaswant Kaur.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of the appellants submitted that the appellants are the bona fide purchases for a valuable consideration as the factum of embargo in the Will vide which Jaswant Kaur inherited the property was not disclosed. The entries in the revenue record reflect that since 1968 till the sale, were reflected in the name of Jaswant Kaur despite having made all reasonable enquiries nothing suspicious surfaced. It was contended that she had already become absolute owner as per the provisions of Section 14(1) of the Hindu Succession Act, 1956 and was not given any limited right. Rest of the land after demise of Sadhu Singh had already been mutated in favour of daughters of Kartar

upon **Jupudy Pardha Sarathy vs. Pentapati Rama Krishna and others** , 2016(1) RCR(Civil) 1 and judgment of this Court in **Chander Parkash and another v. Guru Maharaj Anandpur Ashram Trust and others**, 2017(2) PLR 463. It was next contended that once the plaintiffs had already filed Civil Suit No. 161 of 2009 there was no occasion to seek declaration thereof in a subsequent suit i.e. Civil Suit No. 50 of 2011.

Per contra, Mr. Premjit Kalia, learned counsel appearing on behalf of the plaintiffs in both civil suits submitted that mortgage deeds were registered ones and a fraud had been played upon Jaswant Kaur vis-a-vis the execution of the two mortgage deeds dated 05.06.2009 and three sale deeds dated 30.05.2011 as no sale consideration was ever passed on to Jaswant Kaur. This fact was admitted by Jaswant Kaur in her written statement filed in Civil Suit No. 50 of 2011. The right created in the Will was limited and, therefore, provisions of sub Section 2 of Section 14 of 1956 Act would apply. Once there was a clear embargo on the sale, Jaswant Kaur could not alienate. Challenge was only laid when the sale deeds were executed though she continued to remain in possession of the suit land since the mutation dated 01.11.1968 and urged this Court to affirm the findings rendered by the trial Court in Civil Suit No. 50 of 2011 qua setting aside of sale deeds and set aside the findings rendered in Civil Suit No. 161 of 2009.

I have heard learned counsel for the parties and appraised the paper book and am of the view that there is force and merit in the submissions of Mr. Harsh Aggarwal, for Jaswant Kaur during her life time did not lay any challenge to the sale deeds of 30.05.2011 nor made any complaint to the police with regard to coercion, misrepresentation etc.

Element of collusion reflected in the written statement cannot be ruled out.

The Will is a registered one. It would be apt to reproduce the provisions of Section 14(1) of the Hindu Succession Act, 1956 which are as follows:-

“Section 14(1):- Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.”

The relevant paras of Jupudy Pradha Sarathy's case(supra) are reproduced here as follows:-

22. A three Judges Bench of this Court in the case of R.B. S.S. Munnalal and Others vs. S.S. Rajkumar & Others, AIR 1962 SC 1493, while interpreting the provisions of Section 14(1) of the Act observed:-

“16. By Section 14(1) the legislature sought to convert the interest of a Hindu female which under the Sastric Hindu law would have been regarded as a limited interest into an absolute interest and by the Explanation thereto gave to the expression “property” the widest connotation. The expression includes property acquired by a Hindu female by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever.

By Section 14(1) manifestly it is intended to convert the interest which a Hindu female has in property however restricted the

nature of that interest under the Sastric Hindu law may be into absolute estate. Pratapmull case undoubtedly laid down that till actual division of the share declared in her favour by a preliminary decree for partition of the joint family estate a Hindu wife or mother, was not recognised as owner, but that rule cannot in our judgment apply after the enactment of the Hindu Succession Act. The Act is a codifying enactment, and has made far reaching changes in the structure of the Hindu law of inheritance, and succession.

The Act confers upon Hindu females full rights of inheritance, and sweeps away the traditional limitations on her powers of dispositions which were regarded under the Hindu law as inherent in her estate. She is under the Act regarded as a fresh stock of descent in respect of property possessed by her at the time of her death. It is true that under the Sastric Hindu law, the share given to a Hindu widow on partition between her sons or her grandsons was in lieu other right to maintenance. She was not entitled to claim partition.

But the Legislature by enacting the Hindu Womens' Right to Property Act, 1937 made a significant departure in that branch of the law; the Act gave a Hindu widow the same interest in the property which her husband had at the time of his death, and if the estate was partitioned she became owner in severalty of her share, subject of course to the restrictions on disposition and the peculiar rule of extinction of the estate on death actual or civil. It cannot be assumed having regard to this development that in enacting Section 14 of the Hindu Succession Act, the legislature merely intended to declare the rule enunciated by the Privy Council in Pratapmull case. Section 4 of the Act gives an overriding effect to the provisions of the Act."

28. A similar question arose for consideration before this Court in Subhan Rao case (supra), where a portion of suit property was given to the plaintiff-wife for her maintenance subject to restriction that she will not alienate the land which was given to her maintenance. The question arose as to whether by virtue of Section 14(1) of the Act she became the owner of the suit property. Considering all the earlier decisions of this Court, their Lordships held that by virtue of Section 14(1) of the Act, the pre-existing right in lieu of her right to maintenance transformed into absolute estate.

29. In the case of Nazar Singh and Others vs. Jagjit Kaur and Others, (1996) 1 SCC 35, this Court following the decision in Tulasamma's case held as under:- "9. Section 14 and the respective scope and ambit of sub-sections (1) and (2) has been the subject-matter of a number of decisions of this Court, the

most important of which is the decision in *V. Tulasamma v. Sesha Reddy*. The principles enunciated in this decision have been reiterated in a number of decisions later but have never been departed from. According to this decision, sub-section (2) is confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property.

It has also been held that where the property is acquired by a Hindu female in lieu of right of maintenance *inter alia*, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2) even if the instrument, decree, order or award allotting the property to her prescribes a restricted estate in the property. Applying this principle, it must be held that the suit lands, which were given to Harmel Kaur by Gurdial Singh in lieu of her maintenance, were held by Harmel Kaur as full owner thereof and not as a limited owner notwithstanding the several restrictive covenants accompanying the grant. [Also see the recent decision of this Court in *Mangat Mal v. Punni Devi* where a right to residence in a house property was held to attract sub-section (1) of Section 14 notwithstanding the fact that the grant expressly conferred only a limited estate upon her.]

According to sub-section (1), where any property is given to a female Hindu in lieu of her maintenance before the commencement of the Hindu Succession Act, such property becomes the absolute property of such female Hindu on the commencement of the Act provided the said property was 'possessed' by her. Where, however, the property is given to a female Hindu towards her maintenance after the commencement of the Act, she becomes the absolute owner thereof the moment she is placed in possession of the said property (unless, of course, she is already in possession) notwithstanding the limitations and restrictions contained in the instrument, grant or award whereunder the property is given to her. This proposition follows from the words in sub-section (1), which insofar as is relevant read: "Any property possessed by a female Hindu ... after the commencement of this Act shall be held by her as full owner and not as a limited owner."

In other words, though the instrument, grant, award or deed creates a limited estate or a restricted estate, as the case may be, it stands transformed into an absolute estate provided such property is given to a female Hindu in lieu of maintenance and is placed in her possession. So far as the expression 'possessed' is concerned, it too has been the subject-matter of interpretation by several decisions of this Court to which it is not necessary to refer for the purpose of this case."

culled out by relying upon the judgment rendered by Hon'ble Supreme Court in **V.Tulsamma v. V.Sesha Reddy, 1977(3) SCC 99**. One line in the Will would not debar the beneficiary from willing the property as the testator did not envisage or envision myriad circumstances which may have occurred during the life time of the beneficiary. It is a common practice amongst the executor after execution of the registered document to take the plea of having been duped, duress, coercion and fraud but in order to substantiate such plea proper and cogent evidence is required to be led which is conspicuously wanting in the present case thus the provisions of Section 14(2) of 1956 Act in this case would not apply. Thus, the argument of Mr. Kalia is hereby rejected. The aforementioned provisions of law have not been taken into consideration by the Court while partly decreeing the suit. The substantial question of law is thus answered in favour of the appellants and against the respondents.

As a result of my aforesaid findings, judgment and decree affecting the rights of the plaintiff rendered in Civil Suit No.50 of 2011 is hereby set aside and the suit is resultantly dismissed and judgments and decrees rendered in Civil Suit No.161 of 2009 is upheld and the suit is resultantly dismissed. RSA No. 4796 of 2016 is allowed and RSA Nos. 1960 of 2017 and 5782 of 2016 are dismissed.

(AMIT RAWAL)
JUDGE

12.11.2018
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No