

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

RSA No.507 of 2016 (O&M)

Date of decision:16.05.2018

Sher Singh and another

... Appellants

Vs.

Girdan (since deceased) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. O.P.Goyal, Senior Advocate with
Ms. Deepshikha, Advocate and
Mr. Naveen Sharma, Advocate
for the appellants.

AMIT RAWAL J.

The appellant-plaintiffs are in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit seeking declaration by laying challenge to the judgment and decree dated 23.07.1984 passed in civil suit No.459/19.07.1998 titled as Girdan son of Har Sahai Vs. Nand Kaur wd/o Mulia and 14.02.1998 passed in civil suit No.22/17.01.1998 titled as Vijay Pal and Mahipal son of Bhola Vs. Girdan son of Harsahai, to be illegal, wrong, null and void, as well as the sale deed, mutations qua declaration of ownership alongwith defendants No.5 and 6 in the suit property described in the head note of the plaint, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

As per the per pleaded case of the parties to the lis, the suit aforementioned was filed on the premise that the plaintiffs alongwith

proforma defendants No.5 and 6 were the legal heirs of Jaidai, daughter of Govinda son of Balla. Balla son of Gulab had three sons namely Sahai, Bihari and Govinda, his mutation of inheritance was sanctioned on 14.12.1894. Govinda had a son namely Mulia and a daughter namely Jaidai, mother of the plaintiffs and of proforma defendants No.5 and 6. Govinda died on 27.5.1926 and mutation of inheritance was sanctioned on 29.08.1926 but was not sanctioned in favour of Jaidai who was the sister of Mulia. Mulia brother of Jadaai was married with Nand Kaur and after two years of marriage, he died on 1.12.1942. He died issueless and a mutation of inheritance in favour of widow Nand Kaur was sanctioned on 14.3.1943. Nand Kaur died on 15.6.2002 issueless and her mutation in favour of legal heirs, i.e., plaintiffs and proforma defendants No.5 and 6 was sanctioned on 5.9.2002. Late Jadaai, mother of the plaintiffs and proforma defendants No.5 and 6 was married with Dharam Chand and she also died on 30.12.2002 leaving behind two sons namely Sher Singh and Sube Singh, plaintiffs two daughters, defendants No.5 and 6. Jaidai was also legal heir of his brother Mulia. In this way, plaintiffs and proforma defendants No.5 and 6 have right, title and interest in the landed property which was in the hand of Mulia and later on, it was transferred to his widow Nand Kaur and thereafter to Girdhan/defendant No.1 and ultimately, to Vijaypal and Mahipal/defendants No.2 and 3 only in paper transaction. Jaidai, mother of the plaintiffs and proforma defendants No.5 and 6 being the sister of Mulia had full right, title and interest of ownership and possession of the land which was in the hand of Mulia. The aforementioned decree was challenged

by taking numerous grounds.

Defendants No.1 to 4 appeared and filed the written statement by taking plea of estoppel, maintainability and cause of action. On merit, it was submitted that the plaintiffs had no concern with the suit property as they were neither the legal heirs of deceased Nand Kaur nor had been in possession of the suit property, thus, had no right to challenge the judgments and decrees, *ibid* and prayed for dismissal of the suit.

Since the parties were at variance, the trial Court framed as many as nine issues including the issue of Relief. The plaintiffs examined three witnesses and brought on record the various documentary evidence. Whereas, the defendants examined six witnesses and brought on record the documentary evidence.

The trial Court on the basis of aforementioned evidence dismissed the suit on the premise that succession of Govinda had opened in the year 1926 and therefore, there was no right of the family of Jadai in the property and thus, the mutation cannot be said to be sanctioned incorrectly. The appeal laid before the Lower Appellate Court also met with the same fate.

Mr. O.P.Goyal, learned Senior Counsel assisted by Ms. Deepshikha, Advocate and Mr. Naveen Sharma, Advocate for the appellants submitted that both the Courts below have committed illegality and perversity in not appreciating the fact that a Hindu father or managing member of a Joint Hindu Family can make the gift of ancestral immovable property only within reasonable limits and for pious purposes or no gift can

be made to a stranger. Nand Kaur inherited the suit land from Mulia and died issueless, therefore, Nand Kaur acquired only a limited interest in the suit land after the death of Mulia as per old Hindu Law, the legal heirs of Mulia will be entitled to succeed his estate. Even if assuming for an argument sake, Nand Kaur become the absolute owner having died issueless, as per Section 15 of Hindu Succession Act, her estate would devolve upon the natural legal heirs of her husband, i.e., the appellants and proforma defendants no.5 and 6. Both the Courts below did not appreciate that Nand Kaur was under the influence of defendant nos.1 to 3 as she used to reside alongwith them. She was an illiterate, rustic and innocent woman and by taking the advantage of illiteracy, defendant no.1 managed transfer of the suit land vide judgment and decree dated 23.7.1984. However, the possession of the suit land remained with Nand Kaur or ever delivered to respondent no.1 and respondents No.2 and 3 upto 2002 till her death, rather a fraud had been played by defendants which could not be detected by the plaintiffs and on acquiring the knowledge, approached the Court when suit was filed in 2002 and thus, urged this Court for setting aside the findings under challenge.

I have heard the learned counsel for the appellant-plaintiffs, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr.Goyal, for, appellant-plaintiffs miserably failed to prove through documentary evidence regarding the possession of the suit land with Nand Kaur through out the period, for the following reasons:-

- i) A person who had already obtained a decree would not remain silent if not handed over the possession, thus, the plaintiffs failed to discharge the onus as required under Section 101 of Indian Evidence Act.
- ii) Even the ingredients of fraud and misrepresentation as envisaged under Order 6 Rule 4 CPC have not been proved on record through any direct and cogent evidence.
- iii) Govinda had one son Mulia and one daughter Jadai. Mutation No.47 of 1984 existed in the names of Har Sahai, Bihari and Govinda. The provisions of the Act as sought to be projected by Mr. Goyal, would not apply, for, Govinda died in the year 1926. A daughter did not have any interest in the ancestral property at that relevant time. Nand Kaur during all this period did not challenge the judgment and decree which was in her knowledge. Neither any explanation has come forth of not challenging. It is only after his demise, a suit had been filed, thus, there is unexplained delay in assailing the aforementioned judgment and decree.
- iv) As per the ration card brought on record, Nand Kaur was living with Girdhan. PW3-Ram Chander admitted the possession of Vijay Pal and Mahi Pal over the suit property or he ever cultivated the suit property, much less that of Nand Kaur. It also revealed that the plaintiffs since birth had been

living in village Karnavas. The plaintiffs, in my view, did not have any locus standi to assail the impugned judgment and decree as they were not the legal representatives of Nand Kaur. Nand Kaur was a party to the judgment and decree dated 23.07.1984, Ex. P-7 and Ex. P-8 but did not challenge throughout this period and thus, the suit was beyond limitation. At the time of death of Mulia, no law was existing which entitled the sister to take share from the property of brother and plaintiffs being children of sister, thus, cannot have any right, but the legal representatives of Nand Kaur, would have some right being collateral.

Both the Courts below have taken notice of all the aforementioned facts in correct perspective and rendered the findings of facts and law which in my view do not warrant any interference enabling this Court to form a different opinion than the one arrived at by the Courts below.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No