

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

RSA No.394 of 2015

Date of Order: 01.03.2018

Mangat Ram
(Deceased through LRs)

....Appellants

Versus

Gaje Singh through his LR.

....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Kumar Singal, Advocate for the appellant.

Mr. S.R. Hooda, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Appellant-defendant is in appeal against the judgment and decree dated 11.12.2014 passed by learned lower Appellate Court, Sonapat whereby the appeal filed by the LR of plaintiff-respondent-Gaje Singh against the judgment dated 24.10.2013 passed by Addl. Civil Judge (Jr. Division), Sonapat dismissing the suit, has been allowed.

Gaze Singh instituted the suit claiming possession with consequential relief of permanent injunction on the averments that he became owner of land on the basis of decree dated 27.4.1993 to which Sarupi Devi wife of Man Singh did not raise objection for transferring the property in their favour. Afore-mentioned judgment and decree dated 27.4.1993 was challenged by Mangat Ram son of Mann Singh in Civil Suit No.251 of 18.12.1993 on the ground that the suit property was ancestral and the house in question could not have been given by said Sarupi Devi. Suit was dismissed vide judgment dated 29.11.2001. The appeal filed against the same was also dismissed. Sarupi Devi along with her daughters by way

of filing a suit also challenged the consent decree but the said suit has also been dismissed on 18.7.2007. The judgment and decree dated 27.4.1993 therefore attained finality as no revision or appeal was pending against the said judgment. It is in this background that the plaintiff was constrained to file a suit for possession on 24.5.2008. Afore-mentioned suit was contested by the defendants by raising preliminary objections of maintainability, cause of action, estoppel, limitation, the suit being bad for non-joinder of necessary parties. It was alleged that in fact the house was purchased by Mann Singh-father of the parties to the suit in terms of registered sale deed No.2718 dated 22.1.1964. On his demise, the property devolved upon all his legal heirs i.e their mother, two brothers and two sisters to the extent of 1/5th share each and Sarupi Devi could only give away her 1-5th share and not the entire one despite the fact that the plaintiff was a major. The trial Court on the basis of pleadings of parties framed the following issues:

- “1. Whether plaintiff is entitled for possession of the disputed portion marked by letter ABCD of the house?OPP*
- 2. Whether plaintiff is entitled for injunction as prayed for?OPP*
- 3. Whether the plaintiff has no cause of action to file the present suit?OPD*
- 4. Whether the suit of the plaintiff is not maintainable?OPD*
- 5. Whether the plaintiff has not come to the Court with clean hands and suppressed the true and material facts from the Court?OPD*
- 6. Relief.”*

On the basis of preponderance of evidence, the trial Court dismissed the suit holding that the decree was suffered by a incompetent

person and was not sustainable in the eyes of law at least to the extent of 3/5th share of the house in dispute as the defendant-appellant being the class one heir of the registered owner of the house in dispute inherited 1/5th share after the death of his father. Therefore possession was of a co-sharer. In the appeal preferred by the plaintiff-respondent, the lower Appellate Court while decreeing the suit held that since the property on the demise of Mann Singh devolved upon and mutated in Sarupi Devi, therefore, she was absolute owner in terms of provisions of Section 14 (1) of Hindu Succession Act, hence the present appeal.

Learned counsel for the appellant submitted that while dismissing the suit, learned trial Court has rightly held that Sarupi Devi could alienate only 1-5th share and not the entire one but the learned lower Appellate Court has erroneously reversed the findings and non-suited the appellant-defendant on false pleas. He submitted that the entire evidence on record has been overlooked as the house in question was purchased by his father. The entire property left behind was/is joint hindu family property, therefore the impugned judgment and decree is liable to be set aside.

Learned counsel for the respondent submitted that the plaintiff was in possession of the suit house on the basis of consent decree suffered by Sarupi Devi in his favour. Even the findings have been upheld in both the suits filed by Sarupi Devi and Mangat Ram and the appeal filed against the same was also dismissed, which attained finality. He submitted that Sarupi Devi had become absolute owner of said house as per provisions of Section 14 (1) of Hindu Succession Act and therefore she was competent to suffer decree in any manner she desired, therefore the judgment and decree passed by lower Appellate Court is perfectly legal and justified.

I have heard learned counsel for the parties and appraised the paper book. There is no merit in the present appeal. On demise of Mann Singh, the property was not mutated in the name of all the co-sharers including the appellant to the extent of 1-5th share but in the name of Sarupi Devi. They impliedly acquiesced for sanction of the mutation in favour of their mother. Section 14(1) of the Hindu Succession Act enables a hindu widow to acquire full ownership in such circumstances. The mutation was not challenged, when the suit was filed by Gaze Singh in which decree dated 27.4.1993 came to be passed and Sarupi Devi was absolute owner of the property. Thus, she could deal with the property in any manner as the right of ownership was not taken away and has been rightly held so by the trial Court in Civil suit No.251 of 1993 vide judgment and decree dated 29.11.2001. The finding of the lower Appellate Court in my view, is correct appreciation of law once the issue with regard to the ownership had already attained finality therefore the same could not be re-agitated.

No ground for interference is made out much less substantial question of law arises for determination.

Dismissed.

March 01, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No