

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:1.8.2018

RSA No. 712 of 2017(O&M)

Nijar Mohammad and another

---Appellants

vs.

Smt. Giano Devi and others

---Respondents

RSA No. 1428 of 2017(O&M)

Nijar Mohammad and another

---Appellants

vs.

Smt. Giano Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Ashish Gupta, Advocate
for the appellants

Rekha Mittal, J.

This order will dispose of RSA Nos. 712 and 1428 of 2017 as identical questions of law and fact are involved for adjudication. For brevity, facts are taken from RSA No. 712 of 2017.

The respondents-plaintiffs namely Smt. Giano Devi and Geeta daughters of late Sardara filed the suit for declaration that they are owners in possession to the extent of 2/5th share in land comprised in khewat/khatoni No. 404/477 Killa No. 36//8 (8-0) and 9(8-0) total measuring 16 kanal, situated in the revenue estate of village Nalhar, Tehsil Nuh, District Mewat. They further sought declaration that mutation No.

1772, judgment and decree dated 5.1.2012 passed in civil suit No. 792 of 2011, sale deed bearing vasika No. 757 dated 28.5.2012, agreement dated 6.11.1985, its receipt, GPA dated 14.9.1988, lease deed bearing vasika No. 998 dated 20.7.1995 and mutation No. 2305 on the basis thereof and the revenue entries are not binding upon right of inheritance of the respondents-plaintiffs. Further relief has been sought that the defendants be restrained from alienating suit land and creating any charge over the same. A decree for possession was also sought to the extent of share of plaintiffs with the plea that the same may be allowed in case the defendants are found in possession of the suit property.

The trial court partly decreed the suit holding that plaintiffs have a right of inheritance in the property of late Sardara son of Ram Sahai as per the Hindu Succession Act as it was applicable when inheritance of Sardara opened. All the documents existing in favour of defendants No. 4 and 5 to the extent of share of the plaintiffs in the property were declared illegal, null and void and not binding upon rights of the plaintiffs. The documents of title in favour of defendants No. 4 and 5 to the extent of share of defendants No. 1 to 3 and late Smt. Sarti Devi (mother of the plaintiffs) were held to be valid. The plaintiffs were allowed possession of the suit property to the extent of their share as inherited from late Sardara. Simultaneously, counter claim filed by defendants No. 4 and 5 was dismissed.

The judgment and decree passed by the trial court led to filing of two appeals, one by the plaintiffs and the other by Nijar Mohammad and Deen Mohammad defendant Nos. 4 and 5 (appellants herein) and the same

were decided by a common judgment dated 1.12.2016 passed by the Additional District Judge, Mewat whereby the judgment and decree passed by the trial court were modified to the extent that documents existing in favour of defendants No. 4 and 5 to the extent of share of the plaintiffs in the suit property inherited by them from their mother Sarti Devi are illegal, null and void and not binding on rights of the plaintiffs. However, appeal against dismissal of counter claim of defendants No. 4 and 5 was ordered to be dismissed without any order as to costs.

Counsel for the appellants, at the outset, would inform that he does not assail findings of the Courts holding the plaintiffs entitled to 1/6th share each in the suit property being class-I heirs of deceased Sardara who was succeeded by the plaintiffs, defendants No. 1 to 3 and Sarti Devi widow of Sardara who died after death of Sardara. However, it has been argued that the Appellate Court has wrongly allowed the respondents-plaintiffs to be entitled to 1/30th share each in 1/6th share of Sarti Devi, inherited by her on the death of Sardara. It is vehemently argued that Om Parkash, Ved Parkash, sons of late Sardara, Sita Devi, daughter and Sarti Devi widow of the deceased executed agreement of sale dated 6.11.1985 Ex. DW2/C in favour of defendant No.4 and a registered GPA dated 14.9.1988 Ex. DW2/D in favour of defendant No. 5, therefore, the respondents-plaintiffs cannot claim any right qua share of Sarti Devi, their mother. It is further argued that on the basis of agreement of sale, defendant No. 4 filed the suit seeking its specific performance and the same was decreed on 5.1.2012 by the Court of Additional Civil Judge, Nuh. According to counsel, the Court in Appeal has committed a serious error to uphold plea of the respondents-

plaintiffs with regard to their entitlement to inherit to the estate of Smt.

Sarti Devi by referring to judgment of Hon'ble the Supreme Court **Suraj**

Lamp and Industries Private Limited vs. State of Haryana and another

2011(4) RCR (Civil) 669. It is argued that in **Suraj Lamp and Industries**

Private Limited's case (supra), it has been held in concluding lines of

para 18 of the judgment that the said 'SA/GPA/WILL transactions' may also

be used to obtain specific performance or to defend possession under

Section 53A of the Transfer of Property Act. If they are entered before this

day, they may be relied upon to apply for regularization of allotments/leases

by Development Authorities. It is made clear that if the documents relating

to 'SA/GPA/WILL transactions' have been accepted/acted upon by DDA or

other developmental authorities or by the Municipal or revenue authorities

to effect mutation, they need not be disturbed, merely on account of this

decision. Counsel has further relied upon judgment of the Delhi High Court

Hardip Kaur vs. Kailash and another 193(2012)DLT 168 wherein it has

been held that power of attorney coupled with interest is irrevocable. Such

an authorization cannot be revoked or terminated even upon death of

principal, therefore, a purchaser by way of power of attorney may not be

classical owner as would be an owner under a registered sale deed but

surely he would have better rights and entitlement of possession than the

person who is simply in actual physical possession of the property so

transferred. In the referred authority, on 5.6.1989, the plaintiffs sold the

first, second and terrace floors to Mohinder Kaur for total consideration of

Rs. 4,50,000/-. The plaintiff received the entire sale consideration from

Mohinder Kaur and handed over vacant possession of the suit property to

her. The plaintiff executed the documents on 5.6.1989 namely agreement to sell, receipt for Rs. 4,50,000/-, affidavit, indemnity bond, irrevocable general power of attorney and Will. The agreement to sell, receipt, affidavit, indemnity bond and Will are in favour of Mohinder Kaur whereas irrevocable general power of attorney is in favour of Surinder Jit Singh, son and nominee of Mohinder Kaur. The receipt, irrevocable general power of attorney and Will are registered before the Sub-Registrar. Arvinder Singh Arora, son of the plaintiff has witnessed the aforesaid documents. A Single Bench of the Delhi High Court by taking into consideration various judgments referred to in different paras including judgment in **Suraj Lamp and Industries Private Limited's case (supra)** recorded findings in para 26 and affirmed the impugned judgment with the observations that it is the duty of the Court to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation, ultimately they must suffer the costs of all these years long litigation. As a consequence, the appeal was dismissed with costs of Rs. 2 lakhs to be paid by the appellant.

I have heard counsel for the appellants, perused the paper book particularly the judgments passed by the courts and the referred authorities.

Indisputably, the respondents-plaintiffs are daughters of Sardara and Smt. Sarti Devi. It is not denied that Sardara did not leave behind a testament excluding the respondents-plaintiffs of their right to inherit to his estate. Counsel for the appellants has not disputed entitlement of the respondents-plaintiffs to inherit to the estate of Sardara to the extent of 1/6th share each i.e. 1/3 share whereas the remaining 2/3rd share was

inherited by his other four class-I heirs namely Om Parkash, Ved Parkash, Sita Devi and Sarti Devi.

The appellants have raised the dispute with regard to entitlement of the respondent-plaintiffs qua 1/30 share each out of 1/6th share of Sarti Devi, inherited on the death of late Sardara. The appellants have basically raised their claim on the basis of agreement of sale executed by Om Parkash and others including Smt. Sarti Devi in favour of Nijar Mohammad and registered general power of attorney executed by them in favour of Deen Mohammad, brother of Nijar Mohammad.

In the case at hand, agreement of sale propounded by the appellants is dated 6.11.1985. The general power of attorney was executed on 14.9.1988. Perusal of general power of attorney would reveal that the same does not make reference to agreement of sale dated 6.11.1985. However, Deen Mohammad was given various powers through this power of attorney in respect of land measuring 16 kanal comprising khasra No.

36. The power of attorney has neither been executed on the
8-9

date of agreement nor does it make reference to agreement of sale dated 6.1.1985 and the appellants have not set up the plea that Om Parkash etc. including Sarti Devi executed a Will in favour of defendant No. 4. This apart, the general power of attorney in favour of Deen Mohammad is not an irrevocable power of attorney. The appellants, therefore, cannot derive any advantage to their contentions from the judgment of Delhi High Court in **Hardip Kaur's case (supra)**.

Indisputably, Nijar Mohammad filed civil suit No. 792 of 2011 on the basis of agreement of sale by impleading Om Parkash and others

through Deen Mohammad, as general attorney. It is not denied that on the basis of statement made by Deen Mohammad in view of general power of attorney dated 14.9.1988, suit was decreed by the Additional Civil Judge, Nuh. Counsel has not disputed that before institution of the suit, Smt. Sarti Devi had already passed away. As Smt. Sarti Devi had passed away prior to institution of suit by Nijar Mohammad, Deen Mohammad had no power/authority to make a statement on behalf of Sarti Devi. The power of attorney given by Sarti Devi to Deen Mohammad stood cancelled with death of Sarti Devi. In this view of the matter, the Court in Appeal has rightly held that the judgment passed in the aforesaid civil suit qua share of Sarti Devi is not binding upon rights of the respondents-plaintiffs. The respondents-plaintiffs being daughters of Sarti Devi and class-I heirs alongwith Om Parkash, Ved Parkash and Sita Devi became entitled to $1/5^{\text{th}}$ share each out of $1/6^{\text{th}}$ share of Smt. Sarti Devi in the land in question and accordingly they have rightly been declared to be co-owners to the extent of $1/30^{\text{th}}$ share each in land of Sarti Devi making their total share to the tune of $2/5^{\text{th}}$, as claimed by them. That being so, the Court in Appeal has rightly rectified the error committed by the trial court depriving the respondents-plaintiffs of their right to inheritance to their mother Sarti Devi to the extent of $1/30^{\text{th}}$ share each out of $1/6^{\text{th}}$ share owned by her (Sarti Devi) on the basis of succession to Sh. Sardara..

Counsel for the appellants has expressed his apprehension that on the basis of decree of possession allowed by the trial court, appellant No. 1 may be dispossessed from land purchased by him on the basis of agreement of sale in regard whereof, a decree has been passed in his favour

by the Additional Civil Judge, Nuh. The trial court held the respondents-plaintiffs entitled to 1/6th share each qua inheritance to Sardara but their claim qua inheritance to Sarti Devi was not accepted. However, they were held entitled for possession to the extent of their share as inherited from late Sardara. The Court in Appeal has not passed a decree in favour of the respondents/plaintiffs qua possession to the extent of their share in land belonging to their mother though they have been declared as co-owners to the extent of 1/30th share each in the land of their mother as well. In this view of the matter, plea raised in this regard is of no consequence.

In view of what has been discussed hereinabove, finding no merit, the appeals fail and are accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

1.8.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No