

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: March 25, 2019

1. RSA No.2046 of 1988 (O&M)

Labh Singh & another

...Appellants

Versus

Sukhdev Singh (deceased) through L.Rs & others

...Respondents

2. RSA No.2597 of 1989 (O&M)

Labh Singh

...Appellant

Versus

Ujjagar Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. G.S.Dhaliwal, Advocate,
for the appellants in both the cases.

Mr. R.S.Bains, Advocate,
for respondent No.2 in RSA No.2046 of 1988.

Mr. Karminder Singh, Advocate,
for respondent Nos. 3, 4, 5 & 7 in RSA No.2046 of 1988.

Ms. Harmanpreet Kaur, Advocate,
for respondent No.6(ii) in RSA No.2597 of 1989.

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeals bearing No.2046 of 1988 and 2597 of 1989 as the common questions of law and fact are involved.

RSA No.2046 of 1988 is arising out of Civil Suit No.65-T of 1985 titled as “Labh Singh & another Versus Sukhdev Singh & others” (hereinafter called “Suit No.1”), wherein plaintiffs have been accorded

declaration to be joint owners in possession and as well as use and occupation of the suit land rendering the decree dated 16.04.1971 in Civil Suit No.183 of 1971 as illegal, null & void by injuncting the defendants from alienating the suit property.

RSA No.2597 of 1989 has arisen out of decision of Civil Suit No.30 of 1984 titled as “Ujjagar Singh & another Versus Labh Singh & others” (hereinafter referred to as “Suit No.2”), wherein both the parties to the lis propounded the Wills of Raunqi, whereas the Will dated 22.12.1969 propounded by the plaintiffs and defendant Nos.1 to 5 held to be valid and Will dated 12.03.1983 propounded by defendant No.3 was found to be surrounded by suspicious circumstances resulting into decretal of the suit in favour of the plaintiffs. Appeal filed by the defendants was also dismissed.

The decision of RSA No.2046 of 1988 arising out of Suit No.1 would have a direct effect on the adjudication of the second appeal, i.e., RSA No.2597 of 1989 and, therefore, the facts are being taken from RSA No.2046 of 1988.

Plaintiffs Labh Singh and Harnam Kaur, widow and son of Raunqi, instituted the suit against Sukhdev Singh, Bakshish Singh, Ujjagar Singh, Ajmer Singh sons of Raunqi, Bahadur Singh alias Darshan Singh son of Tara Singh, Karnail Kaur wife of Tara Singh and Tara Singh son of Raunqi claiming declaration that they along with defendant Nos.1 to 4 and 7 are joint owners in possession of land in equal shares by challenging the decree dated 16.04.1971.

It was alleged that the land was ancestral and coparcenary. Raunqi died about nine months prior to filing of the suit and on his demise, plaintiff Labh Singh and defendant Nos.1 to 4 and 7 acquired interest by

birth, whereas Harnam Kaur had also share in the suit land. Request of the plaintiffs for partition was rejected by the defendants on the premise that they had already obtained the decree on 16.04.1971 executed by Raunqi.

Defendant Nos.2 and 3 filed the written statement and admitted that Labh Singh and defendant Nos.1 to 4 and 7 were sons of Raunqi, but there was no jointness or nature of the property being coparcenary as they had been living separately for the last 24 years. There was a family settlement and Raunqi, on the basis of that, suffered a decree dated 16.04.1971. The objection qua suit being barred by law of limitation was also taken.

The trial Court, on receipt of the replication, framed the following issues:-

- “1. Whether the land in dispute is JHF coparcenary property? OPP*
- 2. Whether the decree dated 16-4-1971 has been passed on the basis of family settlement? OPD*
- 3. Whether the decree dated 16-4-1971 is null, void and is not binding on the plaintiff? OPP*
- 4. Whether the suit is time barred? OPD*
- 5. Whether the suit is barred under section 10 CPC? OPD*
- 6. Whether the suit for declaration is not maintainable? OPD*
- 7. Relief.”*

Plaintiffs, in support of the aforementioned pleadings, brought on record Ex.P1 excerpt consisting of 22 pages and Ex.P2 to Ex.P22 through the testimony of PW-2 Gurbax Singh. They were true copies of the original record and as per the pedigree table Ex.P3, found that Raunqi was son of Jawala Ditta son of Chuhra and Chuhra son of Khushala, Khushala son of Dipu and Dipu son of Hansa, so the property from Hansa devolved

upon Raunqi and, therefore, it was ancestral in nature and decreed the suit by holding that Raunqi could not execute the decree of ancestral property without any legal necessity by overlooking the objection of limitation raised by the defendants. In appeal, Lower Appellate Court though held that nature of the property was ancestral, but dismissed the suit by applying the provisions of Article 58 of the Limitation Act.

Mr. G.S.Dhaliwal, learned counsel appearing on behalf of the appellants submitted that the limitation to file the suit where a person is ousted from the ancestral property, as per Article 110 of the Limitation Act is 12 years, thus, Article 58 would not apply. Plaintiffs acquired the knowledge of the aforementioned decree when the defendants, few days before filing of the suit, refused to partition the land as alleged family settlement did not see the light of the day in the absence of association, thus, the findings of the Lower Appellate Court in dismissing the suit, only on the ground of limitation are wholly perverse.

It was also submitted that in Suit No.2, both the parties propounded the Wills, but did not allege any family settlement or decree dated 16.04.1971, thus, the stand in both the cases was wholly opposite and cannot be permitted in the eyes of law. Suit No.2 was tried by the same Judge, but the judgment in the first suit was rendered on 28.05.1987, whereas in Suit No.2 on 24.07.1987, but both are not sustainable in view of the fact that the parties had taken a totally contrary/contradictory stand.

Per contra, Mr. Karminder Singh, learned counsel for respondent Nos.3, 4, 5 and 7 submitted that finding of fact arrived at by the Lower Appellate Court by applying the provisions of Article 58 of the Limitation Act is the correct view and the plaintiffs failed to establish on

record any material qua acquisition of knowledge even if they have to bring the case under the provisions of Article 110. There can be no stoppage of spate of litigation by the legal heirs in case the Legislature in its wisdom did not incorporate the provisions of Article 58 of the Act.

He also submitted that vide Misc.Application No.4558-C of 2011, this Court vide order dated 04.08.2011, allowed the legal heir of respondent No.1 and 7 to be brought on record on the basis of the Will dated 15.11.2009 which was never propounded in Suit No.2, but the same was sought to be recalled vide Application No.10945-C of 2011, which was ordered to be heard with the main case. He also submitted that the aforementioned application allowing the legal representatives was based upon some Will which cannot be decided in the present proceedings in view of the law laid down by Hon'ble the Supreme Court in **Suresh Kumar Bansal Versus Krishna Bansal & Anr., 2010(1) R.C.R. (Civil) 839=2010 (2) SCC 162** to submit that though the parties cannot be relegated to different courts or to institute different proceedings touching on different facts of the same major issue as it would result in conflicting judgments, but as regards the procedure prescribed under Order 22 Rule 5 CPC, though the legal representatives can be allowed to be brought on record but only for the adjudication of the lis as the parties would have to seek probate of a Court whether the Will was genuine or not.

Learned counsel for the parties are ad idem that the findings of the Lower Appellate Court arising out of Suit No.1 would have a direct impact upon the judgments and decrees rendered by the courts below in Suit No.2.

I have heard the learned counsel for the parties, appraised the

paper book, records of the courts below and of the view that the following Substantial Questions of Law arise for determination by this Court:-

- “1) Whether in view of the judgment and decree of the Lower Appellate Court holding the nature of the property to be ancestral, the provisions of Article 110 or 58 of the Limitation Act would apply or not?
- 2) Whether the judgment and decree rendered in Suit No.2 holding the Will of 1969 propounded by the plaintiffs to be valid is sustainable or not?
- 3) Whether the plaintiffs can be permitted to take a different stand by propounding the Will despite holder of the decree of 16.04.1971?

It would be in the fitness of things to extract the provisions of Articles 110 and 58 of the Limitation Act. The same read thus:-

Article 110

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
By a person excluded from a joint property to enforce a right to share therein	Twelve years	When the exclusion becomes known to the plaintiff

Article 58

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
To obtain any other declaration	Three years	When the right to sue first accrued

On plain and simple perusal of the aforementioned provisions, it is evident that Article 58 of the Act applies only for the purpose of obtaining any other declaration when the right to sue first accrues. The Lower Appellate Court in appeal, while upholding the decision of the trial Court with regard to the nature and character of the property, held the suit land to be ancestral/coparcenary. Article 110 of the Act provides period of 12 years when the exclusion from a joint family becomes known to the

plaintiffs. Concededly, the property at the hands of Raunqi was ancestral as it devolved upon him from common ancestor Hansa and, therefore, the limitation would not be 3 years but 12 years.

The next question arises whether the suit filed in the year 1984 would be within limitation. It is a matter of record that Raunqi died 9 months prior to filing of the suit. The succession opened only on his demise, therefore, cannot be said that the cause of action to assert the right and challenge the decree arose only then and not before. There would have been force in case the defendants had been able to place on record any material to establish that decree of 1971 was duly recorded in the revenue record and was in the knowledge. During the course of hearing, the documentary evidence brought on record established that the decree was never recorded in the revenue record. In such circumstances, the plaintiffs would not have remotest idea of collusive decree suffered by Raunqi in favour of the beneficiaries.

It is strange that the parties for claiming a right in the property can go to the extent of propounding the Wills without disclosing the fact that in another suit had taken the aid of the decree. This is what is fathomed from the judgment and decree rendered in the civil suit. Of course, such act is nothing but an outburst of lust/greed, particularly when in Suit No.2, finding with regard to the nature of the property as ancestral was brought to the notice of the Lower Appellate Court. The question of execution of Will without legal necessity cannot partake the character and nature of the property until and unless legal necessity is proved, but the same cannot also be propounded owing to the different stand in both the suits.

There is another aspect of the matter. The question arose before

the Division Bench of this Court in **Ibrahim Versus Smt.Sharifan**, AIR 1980 P&H 25, wherein while interpreting the provisions of the Limitation Act, it was held that a person asserting right on the basis of the inheritance cannot be ousted on the law of limitation except on the ground that when his title or possession is effected. The defendants have failed to establish any such evidence on record to come within the parameters of the aforementioned judgments.

There is some force in the argument of Mr. Karminder Singh in CM No.10945-C of 2011 seeking recall of the order in CM No.4558-C of 2011, whereby the legal representatives of respondent Nos.1 and 7 have been brought on record on the basis of the Will of 2009, which had not seen the light of the day. It would be apt to reproduce the relevant ratio culled out in Para 10 of **Suresh Kumar Bansal's case (supra)**. The same reads thus:-

*“10. Before parting with this judgment, it is necessary to consider the decision of this Court in the case of **Jalai Suguna (deceased) through L.Rs. v. Satya Sai Central Trust and Others, [(2008) 8 SCC 521]** cited by the learned senior counsel for the appellant. In **Jalai Suguna (supra)**, this Court held that the intestate heir (husband) and the testamentary legatees (nieces and nephews), seeking impleadment as the heirs of the deceased respondent in an appeal have to be brought on record before the Court can proceed further in the appeal. Furthermore, in that decision it was also held that a legatee under a Will, who intends to represent the estate of the deceased testator, being an intermeddler with the estate of the deceased testator, will be a legal representative. In view of the aforesaid discussions and in view of the decision reported in **Jalai Suguna (supra)**, we are also of the view that in an eviction proceeding, when a legatee under a Will intends to represent the interest of the estate of the deceased testator, he will be a legal representative within the meaning of Section 2*

(11) of Code of Civil Procedure, for which it is not necessary in an eviction suit to decide whether the Will on the basis of which substitution is sought for, is a suspicious one or that the parties must send the case back to the probate Court for a decision whether the Will was genuine or not.”

On perusal of the same, I am of the view that impleadment of the legal representatives of respondent Nos.1 and 7 is only for adjudication of the Regular Second Appeal but would not confer any title or right of any probate or declaration of Will of 2009 branding themselves to be legal representatives. The order dated 04.08.2011 allowing them to be brought on record is modified to the, aforementioned, extent.

As an upshot of my aforementioned observations, the judgment and decree of the Lower Appellate Court dismissing Suit No.1 by allowing the appeal on the ground of limitation is wholly fallacious and perverse. The same is hereby set-aside. The judgment and decree of the trial Court is restored. Suit No.1 is decreed.

In view of the aforementioned findings, the judgment and decree of the courts below in Suit No.2 would pale into insignificance and all the parties have a right in the aforementioned suit property. Both the appeals are allowed by answering the Substantial Questions of Law in favour of the appellants, plaintiffs in Suit No.1 and defendants in Suit No.2.

March 25, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No