

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RA-RS-100-2019 (O&M)in/and
RSA-2652-2017
Date of Decision:02.11.2019.

Jaydeep Kaur and others

...Applicants-appellants

Versus

Major Teja Singh Mansahia and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Puneet Jindal, Senior Advocate with
Ms.Neha Anand Mahajan, Advocate,
for the applicants-appellants.

Mr.Vipul Aggarwal, Advocate for respondents No.2, 4 and 6.
Mr.Sumit Mahajan, Senior Advocate with
Mr.Amit Kohar, Advocate for respondents No.3 and 7.

ANIL KSHETARPAL, J.

CM-10044-C & CM-10047-C-2019

Delay in filing and refiling the review application is condoned
for the reasons stated in the applications, which are supported by affidavits.

CRMs stand disposed of.

Review application

Review of judgment and decree dated 17.01.2019 has been
sought. The prayer made in the review application reads as under:-

*“It is therefore respectfully prayed that the present application
may kindly be allowed, the judgment and decree dated
17.01.2019 in the above mentioned RSA may kindly be
reviewed and the decree being passed in the present appeal
deserves to be passed not only subject to compromise dated
20.01.2008 but should also say that the shares falling to the
LRs/Legatees of Late Jaswant Kaur will have to be reduced to*

the extent of all sales, gifts and other alienations/relinquishments made by Late Jaswant Kaur during her life time will be accounted for/deducted from their share and additional parcels of land as per compromise deed dated 20.01.2008 be added/part of share falling to the review applicants and persons mentioned as party no.2 in the said compromise deed.”

This court has heard learned counsel for the parties at length.

Learned senior counsel for the review applicants has submitted that the decree framed by the office pursuant to the judgment passed by this Court does not incorporate the finding arrived at by this Court that the compromise/settlement between the parties dated 20.01.2008 shall be binding only qua the signatories to the settlement and not to non signatories. He has further submitted that Gulab Kaur as per the judgment was having half share which in turn was inherited by Jaswant Kaur. He submitted that whatever alienations have been made by Gulab Kaur or Jaswant Kaur that have to be adjusted from their share. Hence, he has submitted that there is no clarification on this suspect of the matter.

On the other hand, learned counsel for the respondent/non-applicant(s) has submitted that this Court had decided a large number of appeals, writ petitions and contempt petitions by a common judgment. He has also submitted that there was no issue with regard to the contention being raised by learned counsel for the review applicants. Hence, he has submitted that the review application is liable to be dismissed.

The Court has a very limited jurisdiction while hearing review petition. Unless review petitioner fulfils the ingredients as provided in the Code of Civil procedure under Section 114 read with Order 47, application for review of the judgment is not maintainable.

The learned trial Court had framed following issues for adjudication:-

- “1. Whether this Court has no jurisdiction in the present suit? OPD.
2. Whether the suit is not maintainable in the present form? OPD.
3. Whether Gobinder Singh was the owner of the suit land and after his death his estate was inherited by Surjit Inder Singh and Gulab Kaur? OPP
4. Whether the suit property was owned by Jaswant Kaur widow of Gurbax Singh? OPP
5. Whether defendants No.1 to 3 have been receiving rent/mesne profits of the property in dispute from the tenants? OPP
6. Whether Jaswant Kaur executed a registered and valid Will dated 21.1.80? If so to what effect? CPP
7. Whether plaintiffs are entitled to separate possession by partition of the property mentioned as item No.A&K to the extent of 1/2 share? OPP
8. Whether the plaintiffs are entitled to joint possession of the property mentioned as Item No. B, C, H, J as detailed in the head note of the plaint? OPP
9. Whether the plaintiffs are entitled to possession of the suit land mentioned as item No. F, G and E? OPP
10. Whether the plaintiffs are entitled to declaration and joint possession of 1/2 share of the land situated in Tehsil

Jind? OPP

11. Whether the plaintiffs are owners in possession of land described at Item No.D in the head note of the plaint?

OPP

12. Whether the plaintiffs are entitled to mesne profits of all the above properties from the defendants? If so of which period and to what extent? OPP

13. Whether the suit is bad for mis joinder of defendants No.8 & 9 as party in this case? OPD-8 &9

14. Whether the suit is barred by time? OPD

15. Whether the suit is barred under Order 2 Rule 2 CPC and Order 23 Rule 1 CPC? OPD

16. Whether the suit is barred by principle of resjudicata? OPD

17. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD

18. Whether the properties purchased by defendants No.8, 9, 16, 17, 18, 19, 29, 49, 50, 114, 148, 150, 165, 166, 179, 51, 52 and other defendants who have filed written statements have been purchased by them as bonafide purchasers from Palwinder Kaur and other defendants without notice the rights of plaintiffs and for consideration? If so to what effect on the present suit? OPD

19. Whether the suit, regarding the property mentioned at item No.A is barred under Order 9 Rule 9 CPC? OPD

20. Whether the suit is bad for misjoinder and non joinder of necessary parties? OPD
21. Whether the property mentioned at item No.1 in the heading of the plaint was purchased by Gopinder Singh from Surjit Inder Singh vide sale deed dated 29.1.58? If so to what effect? OPD
22. Whether Gopinder Singh was owner of this property and executed a Will in favour of Gopal Inder Singh defendant No.3? OPD
23. Whether Gobinder Singh was owner of property mentioned at Item No.A of the head note of the plaint and he gifted this property to Gopinder Singh his son? If so to what effect? OPD
24. If the property mentioned at item No.A was given by His Highness Maharaja Bhupinder Singh Ruler of Patiala State to Gobinder Singh? If so to what effect? OPD
25. Whether Surjit Inder Singh was exclusive owner of the property mentioned at item No.H in the head note of the plaint and he transferred this property to Gurparkash Kaur in the year 1957? If so to what effect? OPD
26. If the above issue is proved, whether Gurparkash Kaur sold this property to Gopinder Singh, Surinder Singh and Gopal Inder Singh on 30.3.70? OPD
27. Relief.

Additional issues were framed as issue No.26-A and 26-B vide order dated 23.9.1996 as under:-

- 26.A. Whether Gobinder Singh suffered a decree dated

24.10.1953? OPD

26B. Whether the decree is valid and binding between the parties? OPD”

As it is apparent from the reading of the aforesaid issues that the arguments/submissions made by the learned senior counsel were not subject matter of issue before the courts below. This Court was only hearing appeal against the judgments passed by the courts below. In any case with regard to first argument, this Court has already clarified vide order dated 3rd October 2019 passed in CM No.8571 C of 2019 in RSA No.1665 of 1998, which is extected as under:-

“While deciding a bunch of appeals vide judgment dated 17.01.2019, it was decided by this Court that the compromise deed dated 20.01.2008 shall form part of the decree and the aforesaid compromise, which would form part of the decree, shall operate and bind only qua the parties to the compromise and not to the non-signatories.

Through this application, prayer made is that in the decrees framed by the office in RSA No.1665 of 1998, RSA No.18 of 1996 and RSA No.619 of 1996 what has been incorporated is that decree would operate only qua the parties to the compromise and the second line i.e. that it shall not be binding on the non-signatories/persons who are not parties to the compromise has not been incorporated.

The apprehension expressed is misplaced. Because once it has been added that the compromise deed which shall form part of the decree would operate only qua the parties to the compromise, obvious conclusion is that it would not operate qua the non-signatories to the compromise.

CM stands disposed of.”

With regard to second argument, it would not be appropriate for this Court to adjudicate upon the aforesaid aspect particularly in absence of

an issue and adjudication thereupon, particularly when no argument on this aspect was never addressed by the learned counsel for the parties when the judgment was delivered.

In view of the above, the review application is disposed of. However, it shall be open to the review applicants to take this plea sought to be raised by way of review application in appropriate proceeding.

02.11.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No