

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

(1)RSA No.1054 of 2008 (O&M)

Date of Decision: May 15, 2019

Darshan Kaur & Ors.Appellants

Versus

Dilawar SinghRespondent

(2) RSA No.80 of 2010 (O&M)

Darshan Kaur & Ors.Appellants

Versus

Mohinder Singh & Ors.Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Vikas Bahl, Senior Advocate with
Ms. Shubreet Kaur, Advocate for the Appellants.

Mr. M.L.Saggar, Senior Advocate with
Ms. Armaan Saggar, Advocate for Respondent No.1
(in RSA No.80 of 2010).

SUDIP AHLUWALIA, J.

The Regular Second Appeal No.1054 of 2008 has been preferred against the impugned Judgment and Decree passed by the Ld. Addl. District Judge, Jalandhar in R.C.A. No.166 of 2006 dated 22.10.2007, vide which the original Judgment & Decree passed by the Ld. Addl. Civil Judge (Senior Division) Phillaur in Civil Suit No.819 of 2003 dated 05.09.2006 in favour of the present Appellants/Plaintiffs were upheld. Another RSA No.80 of 2010 has also been filed against the impugned Judgment and Decree passed by the Ld. Additional District Judge, Jalandhar in RBT RCA No.149 of 2008 dated 27.07.2009,

whereby the original Judgment & Decree passed by the Ld. Civil Judge (Junior Division), Phillaur in Civil Suit No.593 of 2004 dated 04.04.2006 in favour of the present Appellants/Defendants were modified.

2. These two Appeals were heard by this Court together, since the contesting parties involved in both are by and large the same and the decision on merits in RSA No.80 of 2010 would be vital for determining the fate of RSA No.1054 of 2008. Consequently, the said Appeal, which although is latter in point of time, is taken up for consideration first, as its decision will govern outcome of the other Appeal.

R.S.A. No.80 of 2010

3. The Appellants in this case are the Legal Representatives of deceased Gurmail Ram, who was added as Defendant No.7 in Civil Suit No.593 of 2004 filed by the present Respondent No.1 Mohinder Singh against Respondent Nos.2 to 4, and Resham Singh, son of Joginder Singh (original Defendant No.5/Predecessor-in-interest of present Respondent Nos.5 & 6) and Joginder Singh & Balwant Singh-original Respondent Nos.7 and 8 (since deceased), who were arraigned as Defendant Nos.1 to 6 in the original Suit.

4. In the said Suit, Plaintiff/Respondent No.1 had sought a Declaration to the effect that he along with Respondent/Defendants Joginder Singh & Balwant Singh was the exclusive owner in equal share in possession of 781/1025 Share Measuring 39 Kanals 1 Marla of the suit land situated in village Katana, Tehsil Phillaur as per Jamabandi for the year 1988-89 more fully described in the Heading

of the Plaint. Apart from such Declaration, the Plaintiff/Respondent No.1 had also prayed for an injunction against Defendants/Respondents Balihar Singh, Karnail Singh and Resham Singh (since deceased) from interfering in his peaceful possession of the suit land, and from alienating the same in any manner to any one.

5. Background of the matter is that the disputed land along with some more lands situated in village Katana originally belonged to one Rattan Singh, who was survived by his two sons namely Hazara Singh and Milkha Singh. After the death of Rattan Singh, an area measuring 51 Kanals 5 Marlas fell in the share of Hazara Singh (father of Plaintiff/Respondent No.1). According to the Plaint case, the land in question was Ancestral, as well as Joint Hindu Family/Coparcenary property, of which his father Hazara Singh became Karta. However, the said Hazara Singh, who died on 24.6.1987, is alleged to have entered into a Collusive Arrangement with his three grandsons (Respondent Nos.2, 3 and 4- sons of the Plaintiff himself) and his remaining two sons Joginder Singh and Balwant Singh, and procured a Decree conferring the Title in favour of those Defendants in the absence of the Plaintiff/Respondent No.1, which he was not competent to do, since the land in question was inalienable except case of legal necessity being ancestral/coparcenary property. It was his contention therefore, that such Judgment and Decree in favour of Defendants/Respondents was a nullity, which would not have the effect of taking away his own right in the said land.

6. In the interregnum, Respondent Dilawar Singh had entered into

an Agreement of Sale in favour of Gurmail Ram for an area measuring 3 Kanals, out of the 1/4th share, which had come to him on the strength of the impugned Judgment dated 16.1.1986. The said Gurmail Ram thereafter filed a Suit for Specific Performance against Respondent/Vendee Dilawar Singh, but since Dilawar Singh's own Right, Title and Interest in the said land was under a cloud on account of the Suit filed by his father Respondent No.1 Mohinder Singh, the Vendee Gurmail Ram appeared before the Trial Court and filed an Application under Order I Rule 10 of the CPC and sought his impleadment in the proceedings. His Application was allowed and he was consequently added as Defendant No.7 in the Suit, and contested the same actively thereafter.

7. The Suit was nevertheless decreed in favour of the Plaintiff/Respondent No.1 Mohinder Singh as the Ld. Trial Court held that the land in question was actually Ancestral Hindu Coparcenary Property, in which the three sons of Hazara Singh namely Mohinder Singh, Joginder Singh and Balwant Singh had their indefeasible share, and, as such, alienation or transfer of the same in their absence by Hazara Singh in favour of his grandsons was illegal. These findings of the Trial Court were in relation to Issue Nos.2 & 6 respectively, which are set out below -

2) Whether Suit Property is Joint Hindu Family Ancestral and Coparcenary Property? OPP

6) Whether judgment and decree dated 16.01.1986 is illegal, null and void qua right of Plaintiff?OPP

8. It was also observed by the Ld. Trial Court -

“The decree in question is illegal, null and void from another angle also because it was directed by the Civil

Court while passing the judgment dated 16.01.1986 that the decree be got registered, but the said directions have not been complied with till date after a lapse of 20 years and without registration, judgment and decree dated 16.01.1986 do not convey any right upon Defendants no.1 to 4. The impugned alienation cannot be sustained by Hazara Singh. Though the impugned judgment and decree dated 16.01.1986 in favour of Defendants no.1 to 4 because there is nothing on record that Hazara Singh has transferred the land in dispute in favour of Defendants no.1 to 4 for legal necessity. So, the transfer of land in dispute is illegal, null and void qua the right of Plaintiff and Defendants No.5 and 6.”

9. In addition, the question of the alleged Agreement of Sale in favour of the Appellants/added Defendant Gurmail Ram was also considered by the Ld. Trial Court in deciding issue No.9 in its impugned Judgment, which happens to be -

9) Whether Defendant no.3 Dilawar Singh entered into an Agreement to Sell with Gurmail Singh on 07.07.1994, if so its effect ? OPD

10. In this regard, the Trial Court decided partially in favour of the Defendants to the effect that the “*Sale Agreement in their favour 'stands proved on record', but the same has got no effect to defeat the Title of the Plaintiff because Dilawar Singh became owner and in possession of the Suit Property on the basis of Judgment and Decree dated 16.1.1986, which has already been held to be illegal, null and void in preceding Paras of my discussion.*”

11. All the material findings of the Trial Court were upheld by the Lower Appellate Court in its impugned judgment. However, the Ld. Lower Appellate Court modified the Judgment and Decree of the Trial Court by observing that the same except the Prayer Clause in

the original Plaint inasmuch as a declaration regarding 51 Kanals 5 Marlas could not have been granted because doing so, would amount to abolishing the ownership of Pargan Singh regarding 12 Kanals 4 Marlas of land, which he purchased from Balihar Singh and especially when his sale has not been challenged by Mohinder Singh and his brother.

12. It has nevertheless been contended on behalf of the Appellants that in any case, out of total area measuring 39 Kanals 1 Marla, an area measuring 12 Kanals 4 Marlas was admittedly sold by Balihar Singh and Karnail Singh in favour of one Pargan Singh on the strength of Title they have derived from the discredited Judgment & Decree dated 16.1.1986, and there was no attempt on the part of the Plaintiff to challenge such Sale of the Ancestral land wrongfully passed on to his three sons including the Appellants' vendor Dilawar Singh and so they are similarly entitled to acquire their right in the disputed land in view of the Agreement for Sale in their favour. This Court is however, not convinced with this contention. This is so because admittedly, the sale in favour of Vendee Pargan Singh by the Plaintiff's sons Balihar Singh and Karnail Singh was an actually completed transaction. It was therefore, entirely the Plaintiff's prerogative to get the same challenged or not. Undoubtedly, a completed transaction of sale cannot be compared to a mere Agreement, which has got to be enforced by the proposed Vendee. In such circumstances, if the Plaintiff/Respondent Mohinder Singh or for that matter, his two brothers Joginder Singh and Balwant Singh did not choose to impeach the aforesaid conveyance in favour of

Pargan Singh, they cannot be compelled in law to extend any similar favour or exemption towards the proposed Vendee Gurmail Ram in whose favour the sale transaction was in any case not completed.

13. It has also been contended on behalf of the Appellants that the discredited Decree dated 16.1.1986, which covered a total land of 51 Kanals and 5 Marlas at the most could have been voidable only at the instance of sole Plaintiff/Respondent Mohinder Singh, whose own share in the same would have been only slightly in excess of 17 Kanals and so the transaction in favour of Gurmail Ram could have been covered from the remaining land measuring 39 Kanals 1 Marla even allowing for the fact that an additional area measuring 12 Kanals 4 Marlas from the same had been reduced on account of the sale in favour of Pargan Singh. But this submission also carries no substance, since the basis on which the Appellant's Vendor Dilawar Singh had acquired his apparent Right, Title and Interest in the disputed land, is itself a null and void Decree, which would therefore, not convey any transferable right in his favour, notwithstanding that the Plaintiff did not choose to impeach the transfer made by his other two sons in favour of a third person namely Pargan Singh.

14. Ld. Counsel for the Appellants has cited as many as four decisions of this Court to contend that a Compromise Decree creating Title in respect of immovable property does not require registration i.e. **“Gurdev Kaur and anr. Vs. Mehar Singh and ors.” 1989(2) R.C.R. (Rent) 625; “Shanti Devi Vs. Mange Ram” 2010(34) R.C.R. (Civil) 53; “Ranjit Singh Vs. Balbir Singh and others” 2005(1) R.C.R. (Civil) 466 and “Jagdish Vs. Ram Karan” 2003(1)**

R.C.R. (Civil) 657. These Citations were placed with a view to impeach the decision of the Trial Court that the Judgment and Decree dated 16.1.1986 was also illegal, null and void, since it had not been got registered even after 20 years inspite of direction of the concerned Court, which passed the same.

15. There can be no dispute to a position that a Judicial verdict/Decree is not rendered unenforceable simply because it has not been got registered, which essentially is a technical defect of non-compliance of Procedure, on account of which, the actual rights and obligations of the concerned parties cannot be done away with. But in the present case, it needs to be remembered that the defect of non-registration of the earlier Decree dated 16.1.1986 was only an additional ground, on which, the Trial Court had found it to be illegal. Even if this additional ground was not to be factored in, still the Decree in question was in any case a nullity on merits for the reasons determined by the Trial Court, which have been already noted in preceding Paragraph No.7. So reliance upon the aforesaid four decisions of this Court, does not help the Appellants in this case.

16. In addition, the Appellant side has also relied upon the decision of the Supreme Court in **“SUBHOD KUMAR AND OTHERS VS. BHAGWANT NAMDEORAO MEHETRE AND OTHERS” (2007) 10 Supreme Court Cases 571** to contend that the right of a Karta in a Hindu Undivided Family to transfer the Coparcenary Property cannot invariably be curtailed on the ground of lack of legal necessity. Attention of this Court was drawn to the following extracts in the aforesaid Citation -

“Since the Karta of a Hindu undivided family with his four sons had executed the conveyance in favour of the plaintiffs, the suit filed by the plaintiffs for possession cannot be dismissed on the ground of lack of legal necessity. A karta has power to alienate for value the joint family property either for necessity or for benefit of the estate. He can alienate with the consent of all the coparceners of the family. When he alienates for legal necessity he alienates an interest which is larger than his undivided interest. When the karta, however, conveys by way of imprudent transaction, the alienation is voidable to the extent of the undivided share of the non-consenting coparcener which in the present case was Panditrao. In the present case, Panditrao did not sue for partition. He did not ask for demarcation of his share.”

17. However, the above reproduced observations of the Apex Court have no application whatsoever to the facts of the present case. This is not a case, in which, the Karta had executed any Conveyance Deed in favour of any outsider alongwith 'his four sons' (i.e. his own sons who are coparceners). On the contrary, the Suit was filed by and on behalf of his sons themselves, who challenged the Consent Decree in favour of the remaining Respondents (Grandsons of Hazara Singh), which was done in their absence by not even showing them as parties in the Compromise Decree. Further, there is absolutely no case of any kind of legal necessity or even benefit of the Estate in the matter of allowing the Karta's Grandsons to become owners of the coparcenary land after bypassing the actual coparceners/sons of the Karta, and for this reason, the Compromise Decree is certainly voidable at the option of those bypassed sons/coparceners, which was exactly the course resorted to by the Respondent/Plaintiff Mohinder Singh.

18. For the reasons noted above, this Court finds no merit in the present Appeal, which is accordingly, dismissed.

RSA No.1054 of 2008

19. As already noted in Para 6 earlier, vendee of respondent Dilawar Singh had filed RCA No.166 of 2006, in which, he had sought Specific Performance of the Agreement of Sale for the area measuring 3 Kanals. Thereafter, the said Plaintiff Gurmail Ram also got himself impleaded as the contesting Defendant in RCA No.149 of 2008, which was decreed in favour of Respondent Mohinder Singh and his brother, and which Judgment & Decree after slight modification by the Ld. Lower Appellate Court have been upheld by this Court in RSA No.80 of 2010.

20. In deciding the said Appeal, this Court has upheld the decisions of both the Ld. Courts below to the effect that the Compromise Decree suffered by Hazara Singh in favour of his Grandsons including vendor Dilawar Singh is a nullity, clearly no lawful Title or Right to transfer the said land could have been passed in favour of Dilawar Singh. Consequently, the Agreement of Sale entered into by him in favour of Gurmail Ram (Predecessor-in-interest of the present Appellants) would be unenforceable and voidable at the option of Mohinder Singh and his brother, in whose absence, the said Compromise Decree was suffered by their father Hazara Singh. Therefore, as rightly decided by the Ld. Trial Court with reference to Issue No.9 in R.C.A. No.149 of 2008, referred to in Paras 9 & 10 earlier, the *“Sale Agreement in favour of Appellants’ Predecessor has no effect to defeat the Title of Respondent Mohinder*

Singh.” Consequently, this Court finds no illegality or impropriety in the decisions of both the Ld. Courts below, vide which, the Suit for Specific Performance was dismissed, but refund of an amount of Rs.1 Lac alongwith interest thereupon was ordered to be paid to the Appellants/Plaintiffs' side towards refund of earnest money and compensation for the financial loss suffered by them on account of delay occasioned. Thus, the present Appeal also stands dismissed.

(SUDIP AHLUWALIA)
JUDGE

May 15, 2019
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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |