

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. RSA-1448-2010 (O&M)

Kulwant Singh and another

.... Appellants

Versus

Mehar Singh and others

.... Respondents

2. RSA-3798-2012 (O&M)

Kulwant Singh and others

.... Appellants

Versus

Mehar Singh

.... Respondent

3. RSA-3774-2014 (O&M)

Kulwant Singh and others

.... Appellants

Versus

Mehar Singh

.... Respondent

Date of Decision: 27.08.2019

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sanjiv Gupta, Advocate
for the appellants (in RSA-1448-2010).

Mr. RPS Ahluwalia, Advocate
for the appellants (in RSA-3798-2012).

Mr. RP Singh, Advocate
for the appellants (in RSA-3774-2014).

Mr. Malkeet Singh, Advocate
for the respondent (in RSA-3798-2012) and
for respondents No. 1 and 2 (in RSA-1448-2010).

RAMENDRA JAIN, J. (ORAL)

By this common judgment above-titled three appeals are being disposed of, as similar facts are involved therein. For brevity, the facts are being extracted from RSA-1448-2010.

Briefly, one Norata Singh S/o Tara Singh, was owner in possession of certain land and house No. 29, fully detailed in para 1 of judgment and decree of the trial Court dated 13.06.2007, situated in village Panjokhra, Tehsil and District Ambala, as per jamabandi for the year 1983-84. Vide judgment and decree dated 10.03.1993, he transferred his entire property in favour of his maternal nephew, namely; Mehar Singh (respondent No. 1 in RSA-1448-2010). During his life time, Tejwant Kaur (now deceased) got executed a gift deed dated 02.11.2000 from Norata Singh, in her favour. Norata Singh, died on 17.05.2005. Thereafter, one lady Sant Kaur, claiming herself to be widow of Norata Singh, filed a suit challenging aforesaid decree dated 10.03.1993, in favour of Mehar Singh. However, she did not succeed as her suit was dismissed vide judgment and decree dated 13.06.2007. In appeal also, she remained un-successful, as her appeal too was dismissed by lower Appellate Court, vide judgment and decree dated 25.09.2009. Hence, she filed RSA-1448-2010.

Mehar Singh, by way of Civil Suit No. 391 dated 06.05.2004, laid challenge to aforesaid gift deed dated 02.11.2000, in favour of deceased-Tejwant Kaur, which after due contest and holding trial was decreed in his favour, vide judgment and decree dated 17.08.2011. Thereafter, she died. Therefore, her legal heirs challenged

aforesaid judgment and decree in favour of Mehar Singh, before the Ist Appellate Court, but remained un-successful as their appeal was dismissed vide judgment and decree dated 08.05.2012. Further, legal heirs of Tejwant Kaur, filed RSA-3798-2012.

Mehar Singh, beneficiary through judgment and decree dated 10.03.1993, filed another suit bearing Civil Suit No. 364 dated 16.03.2004, for permanent injunction against Tejwant Kaur, to restrain her from interfering into his alleged lawful possession as owner of suit land. The same was decreed vide judgment and decree dated 30.10.2012. LRs of Tejwant Kaur also laid challenge to the same, but remained un-successful, as their appeal was dismissed vide judgment and decree dated 13.03.2014. They have approached this Court by way of RSA-3774-2014.

Relying upon a judgment of the Apex Court in **Phool Patti and another Vs. Ram Singh (dead) through LRs and another, 2015 (1) RCR (Civil) 606**, learned counsel for the appellants (in RSA-1448-2010) *inter alia* contends that both the Courts below have failed to appreciate that impugned judgment and decree dated 10.03.1993, in favour of respondent No. 1-Mehar Singh, being un-registered, was liable to be set aside or ignored, inasmuch as, rights of respondent No. 1-Mehar Singh, in the suit property had accrued for the first time through the same in the year 1993. Both the Courts below have failed to appreciate that Tejwant Kaur daughter of Sant Kaur as PW-1, testified before trial Court that Norata Singh, had solemnized Karewa marriage with Sant Kaur. Therefore, property left by Norata Singh, had to be devolved upon his

wife Sant Kaur. Karewa-nama was exhibited as Ex. A-1/Ex. D-2. The same has also wrongly been ignored by both the Courts below. Even Norata Singh, appeared as PW-1 before the trial Court and testified that he had solemnized Karewa marriage with Sant Kaur. Therefore, both the Courts below ought to have decreed the suit of Sant Kaur.

On the other hand, learned counsel for respondent No. 1 submits that at the time of filing of suits i.e. one by Sant Kaur, claiming herself to be the wife of Norata Singh and another by Mehar Singh, Norata Singh was very much alive. He never came forward to challenge judgment and decree dated 10.03.1993, suffered by him in favour of Mehar Singh. In case, Norata Singh had solemnized Karewa marriage with Sant Kaur, she would have impleaded him as defendant in suit for declaration against Mehar Singh. Norata Singh, after making statement as PW-1 in a suit filed by Sant Kaur, executed an affidavit in favour of Mehar Singh Ex. D-9.

Having given thoughtful consideration to the rival submissions, this Court finds all the above titled three appeals merits dismissal for the reasons to follow:

After sufferance of judgment and decree dated 10.03.1993, Norata Singh, had left with no right, title or interest in the suit property. Therefore, any statement made by him in a suit filed by Sant Kaur, claiming herself to be his legally wedded wife through Karewa Marriage relates to insignificant aspect of the case, inasmuch as, thereafter, he voluntarily filed affidavit Ex. D-9 nullifying his statement in Court in favour of Sant Kaur, testifying therein that Sant Kaur or her legal heirs

had no right, title or interest in the suit property transferred by him in favour of Mehar Singh, vide judgment and decree dated 10.03.1993. The said judgment and decree dated 10.03.1993 throughout remained uncontroverted and un-rebutted. Norata Singh, specifically testified that Sant Kaur and her legal heirs under undue pressure had filed suit to grab his property in an illegal manner. Sant Kaur, had forced him to give statement in her favour. Thus, it is apparent on record that statement made by Norata Singh as PW-1 in civil suit filed by Sant Kaur, was not given by him with his own free will and consent, rather, he had made the same under undue pressure of Sant Kaur.

The stand of appellants throughout in their pleadings was that suit property in the hands of Norata Singh, was ancestral in nature. Therefore, he was not competent to transfer the same vide judgment and decree dated 10.03.1993, in favour of Mehar Singh. However, the appellants did not produce any document in the shape of jamabandi or any other document of title, in support of their above contention that Norata Singh had inherited the suit property from his ancestors. Therefore, both the Courts below have rightly held that suit property in the hands of Norata Singh, was his self-acquired property and he was competent to transfer the same according to his wish in favour of Mehar Singh.

Phool Patti's case (supra), the Apex Court held that decree relating to ancestral property does not require compulsory registration. Even otherwise, every case has its own peculiar facts and circumstances, distinguishable from any other case. Therefore, **Phool Patti's case**

(supra), having altogether different facts and circumstances cannot be applied as a rule of Thumb in this case.

No question of law, much less substantial has been raised in all the appeals. Hence, the same are held not maintainable.

No, other point arises or was urged by learned counsel for the appellants.

I have carefully gone through the judgments of both the Courts below, separately in all the three appeals and found no illegality or perversity in the same. Rather, the same are based on correct appreciation of evidence on record.

In view of discussion made above, all above titled three appeals, being meritless, are dismissed.

August 27, 2019
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(RAMENDRA JAIN)
JUDGE

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