

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

Date of decision: 24.07.2019

RSA No.2204 of 2013 (O&M)

Naseeb Kaur and others

... Appellants

Versus

Mungo

... Respondent

RSA No.2285 of 2013 (O&M)

Naseeb Kaur and others

... Appellants

Versus

Mungo

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajinder Goyal, Advocate
for the appellants.

Mr. Satbir S. Gill, Advocate for
Mr. Lal S. Sandhu, Advocate
for the respondent.

REKHA MITTAL, J. (Oral)

This order will dispose of RSA Nos.2204 and 2285 of 2013 as these have emerged out of the same judgment and decree dated 11.03.2013 passed by the Additional District Judge, Sirsa whereby Civil Appeals Nos.193-CA of 2011 titled 'Mungo Vs. Kartar Singh (deceased) thr LRs and others' and 192-CA of 2011 'Kartar Singh (deceased) thr LRs and others Vs. Mungo' were decided. The appeal preferred by Mungo was allowed whereas the appeal filed by Kartar Singh (deceased) thr LRs and

others was dismissed.

Indisputably, the suit land is measuring 90 kanal 3 marlas situated in village Sainpal, Tehsil Rania, District Sirsa. There is no dispute that plaintiffs are the successors in interest of Ram Chand and so also defendant Mungo, daughter of Pritam Singh and grand-daughter of Ram Chand. It is also not disputed that on the basis of natural succession to Sh. Ram Chand, original owner of the land, Pritam Singh became entitle to half share in the suit land which was later succeeded by Mungo on the death of Sh. Pritam Singh.

The litigation started between the parties way-back in the year 1988 when Civil Suit No.55 of 1988 was filed by the plaintiffs in which Mungo was arrayed as defendant but later at the behest of the plaintiffs of the said suit, name of Mungo was deleted. The aforesaid suit culminated in judgment and decree dated 31.05.1988 wherein the plaintiffs were declared co-owners of the entire land measuring 90 kanal 3 marlas. Later, the parties remained litigating as Civil Suit No.312 of 1996 was filed by Mungo and the same was dismissed on 20.03.1998 with liberty to her to file an appropriate application in Civil Suit No.55 of 1988. Another suit bearing No.1147/C-1997 was filed by Kartar Singh and Darshan Singh plaintiffs No.1 and 2 wherein Mungo was impleaded as one of the defendants. During pendency of the said suit, Mungo executed sale deed qua her 1/4th share in favour of plaintiffs No.1 and 2. However, the said suit was dismissed as it was held that the same has been filed with a view to escape

payment of stamp duty etc. Ms. Mungo filed an application for correction of decree dated 31.05.1988 by invoking Section 152 CPC and the same was allowed vide order dated 01.05.2003 whereby Ms. Mungo was held to be co-owner in the suit land to the extent of $\frac{1}{2}$ share.

The appellants/plaintiffs filed the civil suit claiming ownership of the entire land measuring 90 kanal 3 marlas i.e. 22 kanal 11 marlas by plaintiffs No.1 and 2, 36 kanal 2 marlas by plaintiffs No.3 and 4 and 31 kanal 10 marlas by plaintiffs No.5 to 7. However, plaintiffs No.1 and 2 were declared to be owners in possession of suit land to the extent of $\frac{3}{4}$ th share whereas defendant Mungo was held to be co-owner to the extent of $\frac{1}{4}$ th share and defendant Mungo was restrained from alienating more than $\frac{1}{4}$ th share in the land measuring 90 kanal 3 marlas.

The judgment and decree passed by the trial Court resulted in filing of aforesaid appeals by the contesting parties. The first appellate Court accepted the appeal filed by Mungo and she was held entitle to $\frac{1}{2}$ share in the suit property whereas the appeal preferred by the plaintiffs/appellants to assail entitlement of Mungo even to the extent of $\frac{1}{4}$ th share in the suit property was dismissed.

Counsel for the appellants would inform that the judgments and decrees passed by the Courts are liable to be modified to the effect that whatever land falls to share of Mungo, the remaining land would be co-ownership of the plaintiffs and their individual share holding may be left to be decided in appropriate partition proceedings. At the same time, it is

argued that findings of the trial Court holding the respondent/defendant to be co-owner to the extent of 1/4th share in the suit land and that of appellate Court increasing her share to ½ are liable to be set aside in view of statement made by Ms. Mungo in Civil Suit No.312 of 1996.

Counsel representing the respondent, on the contrary, has supported the judgment and decree passed by the first appellate Court with the submission that at the time of correction of judgment and decree dated 31.05.1988 passed in Civil Suit No.55 of 1988 vide order dated 01.05.2003, subsequent to sale deed dated 16.06.1997 propounded by the appellants and purported to be executed by the respondent, Mungo is entitle to ½ share in the suit land as has been so held by the first appellate Court.

I have heard counsel for the parties, perused the paper book and records.

Be that as it may, it is undisputed position of the case that Kartar Singh and others claimed exclusive ownership of the entire suit land with the averments that plaintiffs No.1 and 2 are entitle to 22 kanal 11 marlas, plaintiffs No.3 and 4 of 36 kanal 2 marlas and plaintiffs No.5 to 7 to the tune of 31 kanal 10 marlas but there is no dispute inter se the plaintiffs with regard to their shares in land held to be co-owned by them.

Ms. Mungo was declared to be co-owner to the extent of ½ share in suit land by way of correction of judgment and decree dated 31.05.1988 while accepting her application filed under Section 151/152 CPC on 01.05.2003. However, in the application for correction of judgment

and decree dated 31.05.1988, there is no reference to sale deed dated 16.06.1997 executed by Mungo in favour of plaintiffs No.1 and 2. Counsel for the respondent has not denied that till date, Mungo has not challenged validity, correctness and binding effect of sale deed dated 16.06.1997 executed during pendency of Civil Suit No.1147/C of 1997. On the contrary, in her deposition in the present case, Mungo has admitted that she executed the aforesaid sale deed in respect of 1/4th share in favour of plaintiffs No.1 and 2. The first appellate Court without appreciating that Mungo has not challenged validity of sale deed dated 16.06.1997 had proceeded on an entirely different tangent to conclude that the said sale deed is not valid and binding against Mungo. The factual findings recorded by the first appellate Court that the appellants did not examine any of the attesting witnesses of the sale deed are contrary to record as the appellants examined Jang Singh PW6 an attesting witness to sale deed dated 16.06.1997 despite the fact that Mungo has not denied execution of the said sale deed. Since Mungo never denied or challenged execution or correction of the sale deed dated 16.06.1997, findings of the first appellate Court in respect of the sale deed in question cannot be allowed to sustain and are accordingly set aside. As a natural corollary, 1/4th share of Mungo in the suit land would be the property of plaintiffs No.1 and 2 on the basis of sale deed dated 16.06.1997.

So far as plea of the appellants that they are also entitle to remaining 1/4th share of Mungo on the basis of statement purported to be

made by her in Civil Suit No.312 of 1996, the same is not tenable in view of the fact that the said suit was disposed of by the Court with liberty to Mungo to file an application in Civil Suit No.55 of 1988. Admittedly, the application filed by Mungo for correction of judgment and decree dated 31.05.1988 was allowed by the Court vide order dated 01.05.2003 and the same has attained finality. Taking into consideration the judgment and decree dated 31.05.1988 and the sale deed dated 16.06.1997 executed by Mungo in favour of plaintiffs No.1 and 2, she is left with 1/4th share in the suit land and accordingly findings of the trial Court and that of the appellate Court accepting claim of Mungo to 1/4th share in the suit land neither suffer from an error much less perversity. In this view of the matter, challenge to entitlement of Mungo of 1/4th share in suit land is not meritorious and is accordingly rejected.

As an upshot of the aforesaid discussion, the plaintiffs shall be entitle to 3/4th share in suit land and extent of their individual shares is left to be decided in appropriate partition proceedings. The remaining 1/4th share shall be owned by Mungo. Neither the plaintiffs would alienate the land more than their share nor Mungo shall be entitle to alienate more than 1/4th share in suit land.

In view of what has been discussed hereinbefore, the appeals stand disposed of with modification in the aforesaid terms, leaving the parties to bear their own costs.

24.07.2019
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No