

In the High Court of Punjab and Haryana at Chandigarh

RSA- 3629 of 2013(O&M)
Date of Decision:2.4.2019

Rajvinder Kaur and another

---Appellants

vs.

Gobind Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Sandeep Jasuja, Advocate for the appellants
Mr. O.P.Kamboj, Advocate for the respondent

Rekha Mittal, J.

Smt. Rajvinder Kaur widow of Balkaran Singh and Manpreet Singh minor son of Rajvinder Kaur and Balkaran Singh filed the suit with an application seeking permission to sue as forma pauperis for grant of maintenance by way of creating charge over land measuring 49 kanal 2 marlas owned by respondent Gobind Singh, grand father of Manpreet Singh and father-in-law of Rajvinder Kaur.

The suit was decreed by the trial court and the respondent was directed to pay maintenance to plaintiff No. 1 @ Rs. 1500/- per month and to plaintiff No. 2 @ Rs. 1000/- per month till he attains majority by creating a charge over the land, detailed in head note of the plaint. In the appeal preferred by respondent Gobind Singh, the Appellate court affirmed findings of the trial court with regard to entitlement of the appellants to get maintenance and so also the rate at which maintenance was assessed by the

trial court but the court set aside findings of the trial court creating charge over land owned by the respondent-defendant by way of modification but subject to certain conditions, incorporated in para 14 of the judgment dated 9.5.2013.

The sole grievance expressed by counsel for the appellants is that trial court rightly created charge over land owned by the respondent in order to ensure payment of maintenance awarded in their favour but the Appellate court without assigning any valid and legal reason set aside judgment of the trial court with regard to creating of charge. It is argued that a charge can be created on the property of the person who is held liable to pay maintenance under the provisions of the Hindu Adoptions and Maintenance Act, 1956. In support of his contention, he has relied upon Division Bench judgment of this Court **Ashok Chopra vs. Meena Chopra and others 2013(25) RCR (Civil) 908**. Reference has also been made to judgment of the Madras High Court **P.Raju vs. Nallammal 2014(12)RCR (Civil) 695**.

Counsel representing the respondent has supported judgment of the Appellate court setting aside charge over land owned by the respondent with the submission that the Appellate Court has sufficiently secured and ensured payment of maintenance by imposing certain conditions, incorporated in para 14 of the judgment passed by the court in appeal. It is further argued that the court in appeal has allowed release of land from charge by the revenue authority only after necessary compliance of the conditions culled out in para 14 of the judgment.

The Appellate court, in para 14 of the judgment, has held that

order of creation of charge over land of the respondent is harsh and is likely to reduce income of the respondent by preventing him from availing loan etc. It has further been held that liberty of owner of the property to deal with the property should not be curtailed in the given facts of the case. The reasoning adopted by the Appellate court to set aside findings of the trial court creating charge is not well founded much less supported by any legal provision or precedent relevant in the context. Even if charge is created on land of the respondent, it does not debar him from mortgaging the land for securing loan though the said charge would be the second charge upon the land. However, as has been rightly argued by counsel for the respondent, the Appellate court has put certain pre-conditions before releasing the land from charge by the revenue authorities. It is not plea of the appellants that the respondent has not complied with those conditions or he has, in any manner, defaulted in payment of maintenance till date. Keeping in view the interest of substantial justice, equity and good conscience, in my considered opinion, findings of the Appellate court releasing the land from attachment can be sustained but subject to imposing another condition, in addition to two conditions imposed by the Appellate Court, to the following effect:-

“In case the respondent transfers rights in the suit land by way of mortgage, lease, sale etc. he would make reference in the document to be executed in favour of the transferee that the appellants have been granted maintenance by the court and they would be entitle to enforce their right of maintenance even against the transferee in case he (respondent) commits default in payment of maintenance.

In view of what has been discussed hereinbefore, the appeal

stands disposed of with modification in the aforesaid terms.

(**Rekha Mittal**)
Judge

2.4.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No