

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 81 of 2013(O&M)

Date of Decision:11.1.2019

Ramesh Kumar and others

---Appellants

vs.

Indira Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.R.S.Kundu, Advocate
for the appellants
Mr. Mani Ram Verma, Advocate
and Mr. Nipun Verma, Advocate
for respondents No. 1 to 3

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit filed by Ram Kishan and others seeking declaration with regard to shares of the plaintiffs in land measuring 76 kanal 16 marlas as per jamabandi for the year 2002-03, situated in village Dhabi Khurd, Tehsil and District Fatehabad and for permanent injunction restraining defendant No. 1 (since deceased) now represented by LRs respondents No. 1 to 3 was dismissed by the trial court vide judgment and decree dated 28.7.2009 and appeal preferred by one of the plaintiffs namely Ramesh Kumar was dismissed by the District Judge, Fatehabad on 13.8.2012.

The plaintiffs have claimed that they being legal heirs of deceased Tulsi are entitle to ownership of suit land to the extent of 1/3rd

share by Ram Kishan and 1/3rd share in equal ratio by plaintiffs No. 2 to 4 and perma defendant Pawan Kumar, thus, entitle to get their names incorporated as such in the revenue records. They have challenged the judgment and decree dated 2.5.1977 passed in case No. 109 of 1977 titled “Om Parkash vs. Bansi” decided by Sub Judge Ist Class, Fatehabad and mutation No. 1155 sanctioned on the basis thereof on 11.6.1978.

Indisputably, the suit land was previously owned by Jaimal son of Meghar Singh. He had three sons namely Tulsi, Bansi and Udey Ram. Udey Ram was adopted by Kesho Ram. Bansi died unmarried in the year 1977. Tulsi had four sons namely Nathu, Om Parkash, Ram Kishan and Ganpat. Ganpat also died unmarried. Nathu died leaving behind defendant No. 2 and plaintiffs No. 2 to 4. To challenge the judgment and decree dated 2.5.1977, it is averred that Om Parkash defendant No. 1 obtained the decree by claiming himself to be adopted son of Bansi. Om Parkash defendant No. 1 was never adopted by Bansi in his life time. There was no pre-existing right of defendant No. 1 in the land of Bansi. The decree in question is not registered. It is further averred that if the decree dated 2.5.1977 is not set aside then defendant No. 1 has no legal right to succeed to land of his natural father Tulsi, being adopted son of Bansi.

Counsel for the appellants would argue that judgment and decree dated 2.5.1977 cannot stand the test of judicial scrutiny as Om Parkash defendant No. 1 was never adopted by Bansi, therefore, the allegations in the plaint of civil suit filed by Om Parkash against Bansi on the basis whereof Om Parkash claimed family settlement to assert his right of ownership of half share in 76 kanal 16 marlas cannot be allowed to

sustain and liable to be set aside. Another submission made by counsel is that Om Parkash had no pre-existing right in the land owned by Banshi, therefore, judgment and decree dated 2.5.1977 cannot be taken into consideration for want of registration. It is further submitted that as in the previous litigation initiated by Om Parkash, he had raised a specific plea that he is the adopted son of Banshi and was adopted by Banshi about 25 years ago prior to 1977 and the said fact was admitted by Banshi in those proceedings, Om Parkash defendant No. 1 cannot claim any right of inheritance to his natural father Tulsi and accordingly, land measuring 38 kanal 8 marlas of the share of Tulsi shall be inherited by his other heirs in accordance with the provisions of the Hindu Succession Act, 1956. It is further argued that the courts below have committed a serious error rather illegality by holding that question with regard to inheritance to estate of Tulsi cannot be decided in the present litigation or the same can be adjudicated in an independent suit to be filed by the plaintiffs-appellants.

Counsel representing the defendant (since deceased) now represented by his Lrs. has supported the consistent findings negating plea of the plaintiffs to challenge the judgment and decree dated 2.5.1977 and mutation sanctioned on the basis thereof. It is argued with vehemence that a decree passed on the basis of admission or to say a consent decree can be got set aside only on one of the grounds on which a contract can be set aside namely if obtained by fraud, misrepresentation or undue influence. It is further argued that a compromise for consent decree does not require registration even if it creates title of the value of Rs. 100/- or more provided it is subject matter of the suit. In addition, it is argued that as Banshi never

challenged the judgment and decree dated 2.5.1977 on any ground whatever, the plaintiffs who are claiming their right in the land through Bansi are not competent to challenge the decree on the grounds set up in the plaint when otherwise challenge to such a decree passed way back in the year 1977 by filing a suit in the year 2006 is otherwise clearly barred by limitation.

With regard to contention of the appellants that Om Parkash is not entitle to the estate of Sh. Tulsi on the premise that he was allegedly adopted by Bansi as per averments raised in the previous litigation, counsel would state that the appellants have already been left at liberty to file an independent suit with regard to inheritance to the estate of Sh. Tulsi. However, counsel has fairly conceded that the matter with regard to inheritance to the estate of Tulsi may be remitted to the trial court for decision on the basis of evidence already adduced by the parties and with liberty to the parties to adduce additional evidence, in accordance with law.

Counsel for the appellants, in reply, would urge that the judgments and decrees passed by the courts may be set aside and the entire matter both in regard to challenge to the judgment and decree dated 2.5.1977 and inheritance to the estate of Tulsi should be left open to be decided by the trial court afresh on the basis of materials already on record and additional evidence, if any, to be adduced by the parties.

I have heard counsel for the parties, perused the paper book particularly the judgments impugned.

There is no dispute between the parties with regard to facts already noticed hereinbefore. Primarily, there are two issues involved in the

present litigation. The first question is with regard to challenge to the judgment and decree dated 2.5.1977 passed in favour of Om Parkash and against Banshi, brother of Tulsi son of Jaimal. Counsel for the respondents has rightly argued that a consent decree can be got set aside if obtained by fraud, misrepresentation or coercion. Equally true is that a consent decree based upon a family settlement does not require registration even if it is created in respect of immovable property of the value of Rs. 100/- or more provided it is subject matter of suit. In this context, reference can be made to Division Bench judgment of this Court **Gurdev Kaur and another vs. Mehar Singh and others 1989 (2) RCR (Rent) 625**. Hon'ble the Supreme Court in **Som Dev and others vs. Rati Ram and another 2006(4) RCR (Civil) 303** has held that right in property acquired by way of family arrangement does not require registration as Section 17(1)(a) of the Registration Act is not attracted. Indisputably, in the present case, the plaintiffs-appellants have not challenged the judgment and decree dated 2.5.1977 on the premise that the same is the result of fraud, misrepresentation or undue influence practised upon Banshi or/and on the court. This apart, as the plaintiffs-appellants are not claiming right to the property left behind by Banshi on the basis of an independent right but only through Banshi, it is not open for them to challenge the judgment and decree on the grounds sought to be raised by the plaintiffs-appellants. Furthermore, as Banshi never challenged the judgment and decree dated 2.5.1977 despite having suffered the same, challenge to judgment and decree of 1977 by filing a suit in the year 2006 is otherwise clearly barred by limitation. Analyzed from any angle, plea of the appellants to assail

findings of the courts negating challenge to judgment and decree dated 2.5.1977 is untenable and has rightly been rejected. In this view of the matter, findings of the courts with regard to challenge to the judgment and decree dated 2.5.1977 are affirmed.

This brings the court to plea of the appellants that Om Parkash is not entitle to inherit to Sh. Tulsi, his natural father as he was allegedly adopted by Bansi about 25 years before filing the suit in the year 1977. The trial court in para 12 of the judgment, has held that this question is not to be decided in the present case because this is not a case of inheritance to Tulsi father of plaintiff No. 1 and defendant No. 1. The matter regarding inheritance to Tulsi can be got settled by the parties by filing separate proceedings. This finding of the trial court has been affirmed by the first Appellate Court without appreciating that the suit for declaration was filed by the plaintiffs claiming specific shares in land measuring 76 kanal 16 marlas by challenging the judgment and decree dated 2.5.1977 and raising an averment in para 11 of the plaint that in case decree aforesaid is sustained, Om Parkash is not entitle to inherit to land left behind by Tulsi.

Counsel for the respondent has fairly conceded that even the question of inheritance to Tulsi needs to be decided in the present lis in view of rival contentions raised by the parties. In this view of the matter, the matter with regard to entitlement of the plaintiffs qua land left behind by Tulsi to the extent of 38 kanal 8 marlas is required to be decided in the present suit because relegating the parties to get it decided in an independent suit would be nothing but would lead to multiplicity of litigation between the parties. In this view of the matter, the question with

regard to inheritance to estate of Tulsi needs to be decided in the present suit in the light of contesting claims raised by the plaintiffs and defendant No. 1. Accordingly, the judgments and decrees passed by the courts refusing to decide the question of inheritance to Sh. Tulsi are set aside to that limited extent. The matter is remitted to the trial court for deciding the said issue on the basis of available materials and additional evidence, if any, to be led by the parties. The trial court shall permit the plaintiffs to lead further evidence without requiring an application to be filed in this regard. Irrespective of whether the plaintiffs lead any further evidence or not, the respondent-defendant would be provided with an opportunity to lead further evidence, if any. The trial court shall ensure that all the class-I heirs of Tulsi are impleaded as a party so that the entire issue with regard to inheritance to Tulsi is decided in the present suit. It is clarified that it would not be open for the trial court to decide the question of correctness of the judgment and decree dated 2.5.1977 and mutation sanctioned on the basis thereof.

In view of what has been discussed hereinbefore, the appeal is partly allowed. The matter is remitted to the trial court for deciding the question of inheritance to the estate left behind by Tulsi, in the terms indicated hereinbefore. In the peculiar facts and circumstances, the parties are left to bear their own costs. The parties through their counsel are directed to appear before the trial court on 5.2.2019.

(Rekha Mittal)
Judge

11.1.2019
paramjit

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