

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

(1)

**SAO No.12 of 2013 (O&M)
Date of Decision: March 27, 2019.**

Jasvir Kaur

.....APPELLANT(s).

VERSUS

Surjit Kaur and another

.....RESPONDENT(s).

(2)

SAO No.13 of 2013 (O&M)

Jasvir Kaur

.....APPELLANT(s).

VERSUS

Charanjit Singh and another

.....RESPONDENT(s).

(3)

SAO No.14 of 2013 (O&M)

Jasvir Kaur

.....APPELLANT(s).

VERSUS

Surjit Kaur and another

.....RESPONDENT(s).

(4)

SAO No.15 of 2013 (O&M)

Jasvir Kaur

.....APPELLANT(s).

VERSUS

Charanjit Singh and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashok Singla, Advocate with
Mr. Ankush Singla, Advocate
for the appellant.

Mr. S.C. Chhabra, Advocate
for the respondents No.1 and 2.

SURINDER GUPTA, J.

All the four above mentioned appeals are taken up together for disposal as the same arise out of common issue regarding inheritance of estate of Amrik Singh, husband of plaintiff-appellant Jasvir Kaur and son of respondent-defendant Surjit Kaur.

Appellant-plaintiff Jasvir Kaur filed two separate suits (Civil suit No.131 and 132 of 15.06.2007) for possession of her share in the land in dispute owned by her husband Amrik Singh situated in two separate villages i.e. Sardulgarh and Rorki and challenged the mutation of inheritance of Amrik Singh bearing No.3189 decided on 28.12.2004 and the order of Commissioner, Faridkot dated 11.01.2006.

For sake of convenience, facts have been taken from civil suit No. 132 of 15.06.2007, which in brief, are that Amrik Singh son of Jora Singh was owner of 1/2 share in land measuring 20 kanals 3 marlas; 166/322 share in land measuring 16 kanals 2 marlas and 65/130 share of land measuring 6 kanals 10 marlas, all situated in village Rorki. He died on 28.08.1997. At the time of his death, plaintiff and Surjit Kaur, his mother were his legal heirs and inherited the estate of Amrik Singh accordingly. After the death of Amrik Singh, plaintiff contracted second marriage on 28.12.2004 with Sukhjinder Singh. In order to deprive the plaintiff of her

share in the suit property, Surjit Kaur in connivance with the revenue authorities got entered mutation No.3189 in her name and got sanctioned the same on 28.11.1998. Plaintiff challenged the above order and her appeal was accepted by the Assistant Collector 1st Grade (SDM), Sardulgarh and order dated 28.11.1998 was set aside. Revenue Authorities were directed to enter the inheritance of share of Amrik Singh equally on the basis of natural succession in the name of plaintiff and Surjit Kaur, who went in appeal before the Commissioner, Faridkot, which was decided vide order dated 20.12.2000 and Asstt. Collector 1st Grade, Sardulgarh was directed to decide the appeal afresh after hearing the parties. The matter was again heard and vide order dated 23.08.2004, mutation of inheritance of Amrik Singh was ordered to be entered as per natural succession. Surjit Kaur again filed appeal before the Collector, Mansa, which was accepted and the inheritance of Amrik Singh was ordered to be entered in the name of Surjit Kaur alone. Plaintiff filed appeal against the order of Collector, Mansa before Commissioner, Faridkot, which was dismissed vide order dated 11.01.2006. Plaintiff claimed that she being the legal heir of Amrik Singh is entitled to 1/2 share in the suit property with Surjit Kaur and the orders of the revenue Courts depriving her of share in the property left by her husband, are illegal and not sustainable. In order to further deprive her to get share in the suit property, mutation No.3543 was got sanctioned in favour of defendant No.2 Charanjit Singh transferring ownership of the suit land in his favour. The transfer of title in favour of Charanjit Singh and consequent mutation are illegal, null and void and not binding on the rights of the plaintiff. Charanjit Singh has further mortgaged the suit land vide mortgage deed No.1804

dated 31.10.2005 and rapat No.99 dated 02.11.2005 on the basis of that mortgage are also not binding on the rights of the plaintiff. Defendant No.2 has also forcibly taken possession of the suit land on the strength of transfer deed No.73 dated 13.04.2005. Revenue authorities were requested to rectify the revenue entries, mentioning the share of plaintiff therein and defendants No.1 and 2 were asked to return possession of the share of the plaintiff but of no avail, hence, this suit.

Defendants No.1 and 2 admitted that plaintiff got married with Amrik Singh in the year 1993. They alleged that she never lived with him because of her illicit relations with Sukhjinder Singh son of Jaswant Singh of village Ladhuwas. She filed divorce petition No.2 dated 08.01.1996, which was allowed by the Additional District Judge, Mansa vide decree dated 10.03.1998 and thereafter she contracted second marriage with Sukhjinder Singh and two children were born from this marriage. Due to mental tension, Amrik Singh left for undisclosed place and a missing report No.18 dated 17.10.1997 was registered at Police Station Sardulgarh. Thereafter, whereabouts of Amrik Singh are not known. The defendants defended the orders passed by the revenue authorities and alleged that plaintiff is not entitled to any share in the estate of Amrik Singh as she was not faithful to him and after divorce, she had contracted second marriage with Sukhjinder Singh. It was alleged that suit is not maintainable under Order 2 Rule 2 CPC and requisite Court fee has not been paid. All other averments of plaint were contested, controverted and denied.

Defendant No.3 contested the claim of plaintiff inter-alia pleading that he has entered into mortgage deed dated 31.10.2005 after

verifying the title of defendant No.2 in the revenue record.

The plaintiff re-asserted and reiterated her case in the replication and controverted the averments in the written statements.

Pleadings of the parties led to the framing of issues in civil suit No.132 of 15.06.2007 as follows:-

- (1) Whether Amrik Singh son of Jora Singh died before remarriage of Jasvir Kaur with Sukhjinder Singh? OPP
- (2) Whether the plaintiff is entitled to inherit the estate of Amrik Singh?OPP
- (3) Whether the plaintiff is entitled to possession of the suit land as prayed for? OPP
- (4) Whether the orders of sanctioning of mutation in favour of defendant No.1 are illegal, null and void and liable to be set aside?OPP
- (5) Whether the deed No.53 dated 11.04.2005 and mutation No.3543 sanctioned in favour of defendant No.2 are illegal, null and void and liable to be set aside? OPP
- (6) Whether the mortgage deed No.1804 dated 31.10.2005 is illegal, null and void and liable to be set aside? OPP
- (7) Whether the defendant No.2 is liable to be permanently restrained from further alienating the suit land? OPP
- (8) Whether the suit is not maintainable in the present form? OPD
- (9) Whether the suit is within limitation? OPD
- (10) Whether the suit against defendant No.3 is bad for want of notice under Section 79 Punjab Co-operative Society Act?OPD
- (11) Whether the suit is barred under Order 2 Rule 2 CPC and Section 11 CPC? OPD
- (12) Relief.

The suit was decreed by learned Additional Civil Judge (Senior Division), Sardulgarh in following terms:-

“It is hereby ordered that the suit of the plaintiff stands partly decreed to the effect that she would be co-owner to the extent of half in the estate of deceased Amrik Singh alongwith defendant Surjit Kaur to the extent of other half and would be entitled to joint possession with defendant No.1 to the extent and transfer deed No.73 dated 11.04.2005, would be a sale of share only and the rapat No.141 dated 24.11.1998 and mutation No.21091 and subsequent revenue orders and the record and mortgage even affecting rights of the plaintiff adversely would not be binding on her.”

Against the judgment of the trial Court, Surjit Kaur, defendant No.1, Charanjit Singh, defendant No.2 each filed 2 separate appeals and learned District Judge, Mansa remanded the civil suits for fresh trial with the observations that learned trial Court has failed to frame proper issues and framed following additional issues for consideration by the trial Court:-

“1-A. Whether Amrik Singh died on 28.08.1997? OPP

1-B. Whether Amrik Singh was missing and whereabouts of Amrik Singh were not known? OPD

1-C. Whether inheritance of Amrik Singh was to open after seven years of missing of Amrik Singh and plaintiff being divorced wife was not entitled to inherit estate of Amrik Singh? OPD

1-D. Whether plaintiff solemnised marriage with Sukhjinder Singh on 28.12.2004? OPP”

I have heard learned counsel for the parties at length.

The question which arise for consideration is as to whether order passed by learned first Appellate Court is as per the spirit and scope of the provisions of Order 41 Rules 23, 23-A and 25 CPC and as to whether the issues as framed by learned first Appellate Court have already been dealt

with by the trial Court.

The first issue framed by learned first Appellate Court is as follows:-

1-A. Whether Amrik Singh died on 28.08.1997? OPP

This was the issue which the trial Court discussed in its judgment in detail while reaching the conclusion that Amrik Singh died on 28.07.1997 and his succession opened on that day.

The first Appellate Court framed second issue as follows:-

1-B. Whether Amrik Singh was missing and whereabouts of Amrik Singh were not known? OPD

In view of the finding of the trial Court that Amrik Singh is proved to have died on 28.08.1997, the above additional issue does not arise. Even otherwise, learned trial Court has dealt with this aspect also and has observed that even if it be believed that Amrik Singh had gone missing on 28.08.1997 as per the report dated 17.10.1997, still the plaintiff being his legally wedded wife is entitled to share in his property after the expiry of period of 7 years after his going missing.

Issue No.1-D is not relevant for the decision of the inheritance of property of Amrik Singh. However, learned trial Court has discussed this fact also in its judgment and has referred to the statement of Surjit Kaur herself in her cross-examination that plaintiff re-married with Sukhjinder Singh on 28.12.2004.

Issue No.1-C as framed by the first Appellate Court is a legal issue, which has also been answered by the trial Court with the observation that even if Amrik Singh is presumed to be missing for the last 7 years, plaintiff is entitled to share in his property after the expiry of that period.

The legality and validity of the findings recorded by learned trial Court is to be seen and ascertained by the first Appellate Court while deciding the appeal on merits. It is evident that learned first Appellate Court instead of proceeding to decide the appeal on merits, adopted a short-cut method to dispose of the appeals by remanding the case on framing additional issues. None of these issues is required to be framed as the same have already been discussed and decided by the trial Court. The parties were well aware of the controversy and led evidence before the trial Court to prove death, missing of Amrik Singh and marriage of plaintiff with Sukhjinder Singh. Order passed by the first Appellate Court remanding the case to trial Court for fresh decision, is not as per the spirit or scope of Order 41 Rule 23, 23-A or 25 CPC.

It is well settled proposition of law that even in the absence of issues, once the parties are aware of the pleadings and there is evidence on record, the Court can decide the controversy and record a finding on the same. Reference to this effect can be made to the observations in case of ***Jai Bhagwan Vs. Shri Jinardhan and another 2012(2) PLR 559***. On the issue of remand of cases, it was observed in case ***Labh Singh and others Vs. Kartar Singh and others 1982 RLR 462***, as follows:-

“4. Even if issues Nos. 2 and 3 required determination, I am of the considered view that the lower appellate Court was in error in setting aside the judgment and decree of the trial Court and in making a complete remand of the case. The lower appellate Court should have either tried issues No.2 and 3 itself or could call for a report from the trial Court under Order 41, Rule 25, Civil Procedure Code. The appellate Court was taking up

the appeal after seven years in a suit filed in the year 1971. Complete remand of the case was not justified on the facts in the present case when read with Order 41 Rule 23 or Rule 23-A added by this Court. Complete remand is permissible only in extreme cases where the trial Court decides suit on a preliminary issue without recording evidence on issues on merits. But wherever evidence is recorded on all the issues on merits, or some of the issues on merits, as in the present case, there should be no total remand of the case to the trial Court. Either the appellate Court itself should record the evidence, if necessary, on the issues on which evidence has been recorded or should call for a report from the trial Court under Order 41 Rule 25, Civil Procedure Code. This salutary rule was laid down way back 40 years ago in ***Dr. Kishan Singh V. Bachan Singh and others AIR 1942 Lahore 201*** (at page 203), wherein it was observed:-

“On the merits, however, I am of opinion that the learned Senior Subordinate Judge acted improperly in remanding the case under Rule 23A. He found that the trial Judge had not framed proper issues and had wrongly excluded certain documentary evidence which the appellant wishes to produce. On these findings he should have framed additional issues and remanded the case under Rule 25 and at the same time directed the trial Judge under Rule 27 to admit the excluded evidence. There was no justification for setting aside the judgment and decree of the trial Court and remanding the case for rehearing and redicision. In this case a retrial of the suit was not necessary, and the case should not have been remanded under Rule 23A which invariably puts the parties to unnecessary

expense and unduly prolongs the final decision.”

Ratio of judgments in above referred cases shows that total remand is permissible only in extreme cases where the suit is disposed of on a preliminary issue and when evidence on issues on merits is not recorded. Even if some issues are not framed or some evidence is not allowed to be led, total remand is not permissible. Therefore, the lower appellate Court fell in error in setting aside the judgment and decree of the trial Court and in making a complete remand.

As per provisions of Order 41 Rule 24 of CPC, when material is available on the file, the Court, should decided the appeal on merits instead of remanding the case.

In view of settled proposition of law as discussed above, I am of the considered opinion that order dated 31.01.2013 passed by the first Appellate Court/District Judge, Mansa is perverse and is not sustainable in the eyes of law and consequently is set aside. The above captioned appeals have merits and are allowed. Parties are directed to appear before District Judge, Mansa on 23.04.2019.

Learned District Judge, Mansa will take files of all the four civil appeals (CAD No.51 and 52 of 31.05.2012, CAD No.67 and 69 of 05.06.2012) on board and proceed to decide the same expeditiously in accordance with law.

March 27, 2019.

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No