

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

RSA No.1836 of 2014 (O&M)

Date of decision:09.04.2019

Jasbir Kaur and another

... Appellants

Vs.

Harbhajan Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Dinesh Ghai, Advocate
for the appellants.

Mr. R.K. Chauhan, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

C.M.No.4488-C of 2014

For the reasons stated in the application which is duly supported by an affidavit, delay of 147 days in re-filing the appeal is condoned.

C.M. stands allowed.

C.M.No.4489-C of 2014

For the reasons stated in the application which is duly supported by an affidavit, delay of 14 days in filing the appeal is condoned.

C.M. stands allowed.

RSA No.1836 of 2014 (O&M)

The present regular second appeal at the instance of the

appellant-plaintiffs, who have not been successful in claiming injunction and declaration qua estate of Udham Singh before the trial Court and affirmed in appeal.

The plaintiffs alleged themselves to be children of Gurbachan Singh, brother of Harbans Kaur wife of Udham Singh, asserted that Udham Singh was owner of the land measuring 23 kanals 12 marlas. They asserted the right to the extent of 1/3 share, on the premise that he was married twice and first wife was Harbans Kaur and second wife Harnam Kaur. Harbans Kaur and Udham Singh died issueless and therefore, Gurbachan Singh, brother of Harbans Kaur had right to succeed.

The defendants opposed the suit and alleged that Udham Singh was married to Harnam Kaur and out of the wedlock, only Janak Singh was born and that fact had already been acknowledged in the previous litigation initiated by him against the present plaintiffs. Both the parties led extensive evidence.

The trial Court and Lower Appellate Court by noticing the finding in the previous suit wherein it was held that Janak Singh was the son of Udham Singh, declined the share in the property.

Mr. Dinesh Ghai, learned counsel appearing on behalf of the appellants submitted that previous suit was only for injunction and the finding with regard to parentage i.e. Janak Singh being son of Udham Singh was only incidental.

In support of the aforementioned contention, relied upon the

ratio decidendi culled out by this Court in **Randhir Singh and others vs. Har Sarup and another 2007(3) RCR (Civil) 403** based upon the findings of the Hon'ble Supreme Court in **Gram Panchayat of village Naulakha Vs. Ujagar Singh and others 2000(4) RCR (Civil) 749**, in other words, it was submitted that finding of the question of title in earlier suit for permanent injunction in the absence of any specific issue cannot be looked into for adjudication in the subsequent suit. The defendants failed to lead any evidence in terms of the provisions of Section 50 of Indian Evidence Act, 1872 to establish the relationship with Udham Singh.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Ghai on two accounts:-

Section 15 of Hindu Succession Act gives the cause to the effected party to succeed to the estate of Hindu female. The same reads as under:-

15. General rules of succession in the case of female Hindus.—

(1) The property of a female Hindu dying intestate shall

devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—
(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

On perusal of the provisions of sub clause (b) of sub-section 2 of Section 15, it is evident that claim to the succession would not open to the relatives of the widow as the legal representatives of husband would have precedence. The other insurmountable impediment upon the plaintiffs was the findings in the previous suit. On going through the contents of the judgment, at first blush, looked to be 100% case in favour of the plaintiffs.

I am afraid the aforementioned judgment cannot be said to be *in rem* as opinion of this Court differ with the following reasons:-

In the previous suit, the plaintiffs herein arrayed as defendants did not accept Janak Singh to be son of Udham Singh and gone to the extent of leading an evidence.

It is settled law that even if the parties to the lis are alive to the situation and no issues are framed, decision on such matters would have credence. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court **P.Purushottam Reddy Vs. M/s Pratap Steels Ltd. 2002(2) RCR (Civil) 70**. Para nos.9 and 10 reads thus:-

“9. Assuming that there was any deficiency in the pleadings and also an omission on the part of the trial court to frame a specific issue, the present one is a case where the applicability of the law laid down by this court in [Nagubai Ammal and Ors. v. B. Shama Rao and Ors.](#), was squarely attracted. In Nagubai case this court was called upon to examine if the plea of lis pendens was not open to the plaintiff on the ground that it had not been raised in the pleadings. Neither the plaint nor the reply statement of the plaintiff contained any averment that the sale was affected by the rule of lis pendens. There was no specific issue directed to that question. However, evidence was adduced by the plaintiff on the plea of lis pendens and not objected to by the defendants. The question was argued and tested by taking into consideration the evidence that the proceedings were collusive in character with a view to avoid operation of [Section 52](#) of the T.P. Act. This court felt satisfied that the defendants went to trial with full knowledge that the question of lis pendens was in issue, had ample opportunity to

adduce then evidence thereon, and fully availed themselves of the opportunity. This court formed the opinion that in the circumstances of the case, absence of a specific pleading on the question was a mere irregularity which resulted in no prejudice to the defendants. After having noticed the rule of pleadings as applicable to civil law that "no amount of evidence can be looked into upon a plea which was never put toward", this court held. "The true scope of this rule is that evidence let in on issues on which the parties actually went to trial should not be made the foundation for decision of another and different issue, which was not present in the minds of the parties and on which they had no opportunity of adducing evidence. But that rule has no application to a case where parties go to trial with knowledge that a particular question is in issue, though no specific issue has been framed thereon and adduce evidence relating thereto".

10. In the case before us it was not the grievance raised by any of the parties before the High Court that there was any failure on the part of the trial court in discharging its obligation of framing issues. Nobody complained of prejudice at the trial for want of any issue or a specific issue. It was nobody's case that any evidence, oral or documentary, was excluded or not allowed to be taken on record by the trial court. The very fact that the defendant-appellants have come up to this court laying

challenge to the order of remand shows that the appellants are not interested in remand and do not want any additional issue to be framed or to adduce any further evidence. One of the pleas taken by the appellants in the memo of special leave petition is that the High Court had erred in remanding the matter back for fresh trial and the High Court had failed to appreciate that there was sufficient material on record to show absence of readiness and willingness on the part of the plaintiff to perform its part of the contract. On the other hand, after the passing of the impugned order of remand the plaintiff-respondent has also through his counsel, filed a memo before the trial court on 18.2.2000 submitting that on the additional issues framed pursuant to the direction of the High Court, the evidence on behalf of the plaintiff was already on record and the plaintiff would lead rebuttal evidence only if any evidence only if any evidence was adduced by the defendants. Thus the plaintiff is also not desirous of adducing any additional evidence on the issues.”

Section 33 of Indian Evidence Act also enables the party to rely upon the statements, pleadings in the previous proceedings. All the provisions of law with all humility and respect referred to by Mr. Ghai were not adverted to and therefore, there was no occasion for adjudication on larger prospect as involved in the present case.

The specific pleaded case of the appellant-plaintiffs who were the respondents in other suit was that Janak Singh was not the son of Udham Singh. In fact, at their instance, the aforementioned findings came to be arrived at, thus, arguments of Mr.Ghai, fail on all accounts and thus, there is no illegality and perversity in the judgments and decrees of the Courts below.

Resultantly, the regular second appeal is dismissed.

April 09, 2019

savita

Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No