

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RSA-895-1990
Reserved on :08.07.2022
Date of decision : 13.07.2022

BHAJAN SINGH (SINCE DECEASED) THROUGH HIS LR

..Appellant

Versus

JAGIR SINGH (SINCE DECEASED) THROUGH HIS LRS & ORS.

..Respondents

2. RSA-908-1990

JAGIR SINGH (SINCE DECEASED) THROUGH HIS LRS & ORS.

..Appellants

Versus

BHAJAN SINGH (SINCE DECEASED) THROUGH HIS LR

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Malkeet Singh, Advocate
for the appellant(s) (in RSA-895-1990)
for the respondent (in RSA-908-1990).

Mr. Hemant Sarin, Advocate
for the appellant (in RSA-908-1990)
for respondent No.1 (in RSA-895-1990).

ANIL KSHETARPAL, J.

This judgment shall dispose of two cross-appeals filed by the defendants and the plaintiffs, respectively. The learned counsel representing the parties are *ad idem* that both the appeals arise from the same suit, therefore, these appeals can conveniently be disposed of by a common judgment.

Some peculiar facts are required to be noticed.

Late Sh. Munsha Singh and late Sh. Hazara Singh owned land

measuring 14 kanals and 8 marlas comprised in Khasra No.514, 521 and
MOHD AYUB
2022.07.19
I attest to the accuracy and
integrity of this document.

510 in village Pind Purana, Tehsil Batala. They sold the land to Sh. Narain Singh, Sh. Lachman Singh, Sh. Udham Singh, Sh. Bawa Singh and Sh. Sadhu Singh vide sale deed dated 14.05.1941. The plaintiffs filed Civil Suit No.371 of 1945 under Customary Law challenging the aforesaid sale made by their respective fathers late Sh. Munsha Singh and Sh. Hazara Singh, claiming that the land being ancestral in nature could not be alienated without legal necessity and the same would not affect their rights as reversioners. The aforesaid suit was partially decreed on 21.06.1946 while declaring that the sale of land bearing Khasra No.514 and 510, shall not affect the plaintiffs reversionary rights after the death of defendant No.6 and 7, but they shall be liable to pay Rs.441/- to the defendant No.1 to 4, which is declared to be a valid charge on the suit property. The suit qua land comprised in Khasra No.521, was dismissed. The appeal filed against the judgment passed on 21.06.1946, was allowed on 07.11.1946. However, in Regular Second Appeal No.236 of 1947, the judgment passed by the First Appellate Court was set aside while restoring the judgment passed by the trial Court. The Letter Patent Appeal filed before the Division Bench was also dismissed.

The Vendor Sh. Munsha Singh died on 14.07.1964. Vendees Sh. Udham Singh and Sh. Bawa Singh sold their share in the land to defendant No.4 namely late Sh. Bhajan Singh who is the son of another vendee Sh. Narain Singh. The original vendor Sh. Hazara Singh also died on 20.10.1982. After the death of both the vendors, the plaintiff filed the present suit for possession of land measuring 9 kanals and 6 marlas on payment of Rs.441/- in view of the decree dated 21.06.1946. The defendant No.4 contested the suit, whereas, the other vendees were proceeded against

Appellate Court, subsequently, modified the decree. The suit qua half share of late Sh. Hazara Singh was decreed, whereas, the suit qua the remaining half share of late Sh. Munsha Singh was dismissed being time barred. This is how, the appeal i.e. RSA-908-1990, has been filed by the plaintiff, whereas, the appeal i.e. RSA-895-1990 has been filed by defendant No.4.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the record, which was requisitioned.

It may be noted here that the same view has been reiterated in **Baldev Singh and another Vs. Makhan Singh and others, 2012 SCC (online) P&H 17458**. In this case also the Court relied upon the judgment passed by the Division Bench in **Kamakar Singh's case (supra)** and **Kesar Singh's case (supra)**. Moreover, in **Ujagar Singh Vs. Badan Singh and others, 2011(1) PLR 139**, again the same view was taken and held that the declaratory decree obtained by the plaintiff under the Customary Law have been made ineffective and are no more enforceable. Again, it was held that the 1973 Amendment Act is applicable.

It may be noted here that the point involved in the present appeals is covered by a Division Bench judgment in **Kamakar Singh and others Vs. Didar Singh and others 2010(2) ILR P&H 772**. The Division Bench took note of the fact that the Punjab Custom (Power to Contest) Amendment Act, 1973, provides that the right to contest alienation on the basis of the Customary Law has ceased to exist. After relying upon a Larger Bench judgment of the Supreme Court in **Darshan Singh Vs. Ram Singh and another, AIR 1991 SC 1654, Kesar Singh and others Vs. Sadhu (1996)7 SCC 711 and Shakuntla Devi Vs. Kamla and others, (2005)5 SCC**

such right has been taken away with retroactive effect i.e. the amendment shall apply to the pending proceedings, at any stage. Thus, no decree for possession could be passed in such pending cases. In that case also, there was a prior decree on the basis of Customary Law to the effect that the reversionary rights of the plaintiff in the previous suit shall not be affected. However, in the subsequent suit, the Court held that in view of the 1973 Amendment Act, such decree is no longer enforceable.

It may be noted here that the same view has been reiterated in *Baldev Singh and another Vs. Makhan Singh and others, 2012 SCC (online) P&H 17458*. In this case also, the Court relied upon the judgment passed by the Division Bench in *Kamakar Singh's case (supra)* and *Kesar Singh's case (supra)*. Moreover, in *Ujagar Singh Vs. Badan Singh and others, 2011(1) PLR 139*, again, the same view was taken and it was held that the declaratory decree obtained by the plaintiff under the Customary Law is rendered ineffective and is no longer enforceable because the 1973 Amendment Act is applicable with retroactive effect.

Keeping in view the aforesaid facts, the suit filed by the plaintiff is liable to be dismissed.

Consequently, the appeal filed by defendant No.4 i.e. RSA-895-1990, shall stand allowed, whereas, the appeal filed by the plaintiff i.e. RSA-908-1990, shall stand dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

13th July, 2022

**(ANIL KSHETARPAL)
JUDGE**

Ay

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No