

**CR-1717-2020 (O&M)**

Date of Pronouncement : October 28, 2022

.....Petitioner

## Sunita and others

## ...Respondents

Mr. Ashish Kapoor, Advocate  
For respondents No.3 to 7, 13 to 16 and 18.

**ARVIND SINGH SANGWAN, J.**

"It is, therefore, prayed that a decree for declaration may kindly be passed in favour of the plaintiff and against the defendants to the effect that the plaintiff is co-owner in joint possession of 1/10<sup>th</sup> share in the

land measuring 713 Kanal mentioned in para No.10 of the plaint being a coparcener and the aforementioned judgment and decree dated 3.5.1972, dated 15.5.1972, dated 6.10.1983, dated 30.8.1984, dated 30.5.1988, dated 1.2.1989 and the sale deeds No.191 dated 22.5.1972, No.39 dated 26.5.1972, sale deed No.1000 dated 12.3.1986, sale deed No.207 dated 4.6.1991, sale deed No.13 dated 15.4.1994 and sale deed dated 4.4.2000, gift deeds No.13 dated 15.4.1994 and sale deed dated 4.4.2000, gift deeds No.3685 dated 29.1.2014 and mutations No.2339, 3086, 3089, 3670-A, 3693-A, 3694-A, 5815, 3745, 3815-A and 3969 are null, void-ab-initio and not binding on the rights of the plaintiff and further the defendants may be restrained from alienating the suit land i.e. 1/10 share of land measuring 713 Kanal and ousting the plaintiff from the suit land by passing a decree of permanent injunction.

It is further prayed that if during the pendency of the present suit, the defendants succeed to alienate the suit land then the same deeds for transfer of suit land may also be declared *null* and *void*.

Any other relief which this Hon'ble Court deems fit and proper may also be granted to the plaintiff."

In nutshell, the case set up by the respondent-plaintiff is that one Jasram was the Karta of Hindu Undivided Family. He had three sons, namely, Badlu, Raje and Deepu. Badlu and Raje died issueless, whereas Deepu had a son, namely, Shrichand (deceased), who was married to Bhalian (deceased). Shrichand had two sons, namely,

Ramphal and Umed Singh (deceased). Ramphal was married to Nanhi and out of this wedlock, Anita, plaintiff-Sunita, Krishan, Sajjan (died issueless) were born, whereas Umed Singh was married to Birmati, who died and later on remarried to Dhano, who also died and is survived by his son Naseeb Singh and daughters Rajbala, Sheela and Kamlesh. The legal heirs of all the surviving persons are impleaded as defendants.

The plaintiff has set up a case that land measuring 154 Bighas and 38 Bishwas, detailed in the plaint, is situated in village Madina, Tehsil Meham, District Rohtak and is ancestral property in the hands of Jasram, who died in 1890. Later it was inherited by his three sons vide mutation dated 8.6.1890 and the position is reflected in the subsequent jamabandis upto the year 1957-58. The details of the land, which was allotted in lieu of the aforesaid land during the consultation is also given in the plaint which was converted into 713 Kanals of land.

In para 10 of the plaint it is stated that on 26.1.1952, a wrong and illegal mutation was sanctioned in the name of Bhalian wife of Shrichand, which was on the back of Deepu. It is further stated that on 3.5.1972, Shrichand and Bhalian suffered a collusive decree qua 138 Kanals 9 Marlas of land in favour of their son Ramphal, i.e. defendant No.1 and later on a mutation was sanctioned. Again, on 15.5.1972, another collusive decree was suffered in favour of other son Umed Singh and mutation was also sanctioned. Similarly, certain other transfers were made by Shrichand by way of sale deeds pertaining to the year 1972 and their mutations were sanctioned. It is further stated that on 6.10.1983 Bhalian suffered a decree in favour of defendants No.2 and 4 qua 183 Kanals 05 Marlas of land and mutation was sanctioned. Again, Shrichand suffered a collusive decree on 30.8.1984 qua 183 Kanals 05 Marlas of land in favour of Dhano, wife of Umed Singh and again mutation was sanctioned.

In para 16, the plaintiff stated that all the aforesaid decrees followed by the respective mutations are not binding on the right of the plaintiff, the land being the ancestral in nature. It is further stated that subsequently again, the defendant suffered collusive decrees, either to transfer of land in favour of other defendants, which is not binding on the right of the plaintiff. In para 23, the details of the sale deed dated 12.3.1986, dated 4.6.1991 and 15.4.1994 executed by the defendant in favour of other persons are given and it is stated that the sale deeds of mutation passed their open are not binding on the right of the plaintiff.

It is worth noticing that the present suit is instituted on 26.7.2016 challenging the aforesaid judgment and decrees.

The defendant Nos. 1 to 5 appeared and contested the suit and also filed an application under Order VII Rule 11 read with Section 151 CPC and pleaded that the plaintiff has challenged the judgment and decree from 1992 till 1999 were very much in the knowledge of the plaintiff and, therefore, the suit is time barred. The second ground is that the plaintiff is seeking declaration and possession of the sale deeds from 1972 till 2000 and has not paid the *ad valorem* Court fee on the value of the sale deeds which comes to Rs.1,44,00,000/- and, therefore, the plaint is liable to be rejected.

Reply to the application was filed and it is stated that the plaintiff is not seeking cancellation of the sale deeds or the judgments and rather has pleaded declaration that the aforesaid sale deeds for the judgment and decree are not binding on the right of the plaintiff she being a coparcener in the property and is in possession of 1/10<sup>th</sup> share of the total land. The trial Court dismissed the application by passing the following order :-

"6. I have duly heard the rival submissions and have gone through the record very carefully. It is settled law that for deciding the application under Order VII Rule 11 C.P.C., only the contents of the plaint are to be seen. So, on perusal of the plaint in hand, it is seen that the respondent/plaintiff has filed this suit claiming that she is a coparcener in the land left by her predecessor in interest, namely, Umed Singh. In such capacity, she has challenged the validity of the impugned sale deed and judgments and decree, mentioned above on various grounds, basically contending that the property is coparcenary and she had no knowledge of the impugned judgments and decrees. She has contended that the defendants allegedly intend to grab her share in the land and want to oust her from the suit land. So she has prayed for the relief of declaration that she is co-owner in joint possession of 1/10<sup>th</sup> share in the suit land and thus, she has challenged the impugned sale deeds, judgments and decrees and connected mutation. She has further prayed that the defendants may be restrained from alienating 1/10<sup>th</sup> share in the suit land and ousting her from the suit land. She has prayed that if during pendency of the suit the defendants alienate the suit land, then such transfer of land may be declared as null and void. Hence, in the plaint, the plaintiff/respondent has sought the relief of declaration and permanent injunction, without claiming possession of the suit land. It has been laid down by the Hon'ble Supreme

Court of India in **Suhrid Singh @ Sardol Singh Vs. Randhir Singh and others (2010) 12 SCC 112** that "where the executants of a deed wants it to be annulled, he has to seek cancellation of the deed, but if a non-executant seeks annulment of a deed he has to seek a declaration that the deed is invalid. In essence both may be suing to have the deed set aside or declare as non binding but the form is different and Court fee is also different. For an executants of the deed who seeks cancellation of the deed has to pay ad valorem Court fee on the sale consideration amount whereas where non executants is in possession and he seeks declaration that the deed is null and void he has to merely pay a fixed Court fee as per second schedule of the Act. But, if a non executants, who is not possession seeks not only declaration that the sale deed is invalid but also the consequential relief of possession he has to pay ad valorem Court fee as per Section 7(iv)(c) of the Act.: Coming to the facts in hand, the respondent is non executant to the impugned deeds and she is not seeking possession of the suit land but is claiming to be in possession and has alleged that the defendants are threatening to disposes her. In such a case, the respondent has merely to pay fixed Court fee and not ad valorem Court fee. Such Court fee has been already affixed by the respondent as plaintiff.

7. Further, the questions of limitation and cause of action cannot be prima facie decided

without going through merits of the case. In view of the said discussion, no grounds are made out to reject the plaint under Order VII Rule 11 CPC on any of the grounds claimed in the application. Accordingly, the application stands dismissed.”

Counsel for the petitioner has argued that from the bare perusal of the plaint, it is clear that the suit is filed without any cause of action or legal right, the plaint is liable to be rejected in terms of provisions of Order VII Rule 11 (A) and (D) of CPC.

Counsel for the petitioners has further submitted that he suit has been instituted after about 44 years of the passing of the judgment and decree dated 3.5.1972 and similarly, is time barred qua the sale deeds, which are under challenge relating to the years 1972, 1986, 1991, 1994 and 2000.

Counsel for the petitioner has also submitted that even otherwise the plaintiff has no right in the property, which is originally owned by one Jasram and when the civil suit was filed by Ramphal, the father of the plaintiff, she was alive and, therefore, in view of the amendment in Section 6 of the Hindu Succession Act, giving a right to a daughter in coparcenary property, which came into force w.e.f. 9.9.2005, the respondent-plaintiff can not claim any right against alienation made prior to the amendment of the Hindu Succession (Amendment) Act, 2005 as provided in terms of Section 6 of the Hindu Successions Act itself.

Counsel for the petitioner has further submitted that since the respondent-plaintiff is challenging the sale deeds, therefore, she is liable to pay ad valorem Court fee on the value of the land as per sale deed.

In reply, the counsel for the respondent has argued that it is well settled principle of law that that the plaint cannot be rejected partially and once the trial Court has framed the issues with regard to the limitation, the same will be adjudicated upon by the trial Court at the time of final disposal, i.e. whether the claim made in the suit is time barred or within limitation and, therefore, the plaint cannot be rejected at this stage.

Counsel for the respondent has further submitted that the suit is within limitation as per the amended provisions of Section 6 of the Hindu Secession Act, 1956. Counsel has further submitted that in view of the judgment of Hon'ble the Supreme Court passed in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others (2010) 12 SCC 112**, the respondent-plaintiff is not bound to pay the *ad valorem* Court fee on the sale consideration amount.

After hearing the counsel for the parties, I find no merit in the present petition.

Though, the argument raised by the counsel for the petitioner-defendant, on the face of it appears to be correct that the suit has been instituted after 44 years of the first alienation made by the predecessors of the parties and the last sale deed was executed in the year 2000, whereas the suit is instituted in the year 2016, however, with regard to the property which is still not alienated and is available the hands of the respondents, who are the legal heirs of Ramphal son of Shrichand, the suit, at this stage, cannot be held to be barred by limitation as the parties are required to lead evidence for the same, especially in view of the amendment to the Hindu Succession Act made in the year 2005. Therefore, the plaint can not be rejected partially.

So far, the affixation of the Court fee on the challenged sale deed is concerned, the trial Court has rightly held that in terms of **Suhrid Singh's** case (*supra*), the respondent has to pay the affixed Court fee and not *ad valorem* Court fee, at this stage.

In view of the above, the present revision petition is dismissed.

**( ARVIND SINGH SANGWAN )  
JUDGE**

**October 28, 2022**  
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Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO