

Bhoop Singh

.Petitioner

Versus

Krishan Kumar and others

..Respondents

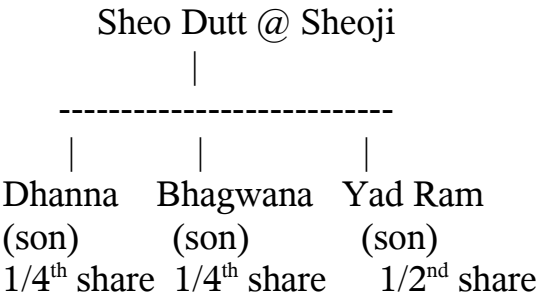
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Sanjay Mittal, Advocate
for respondent no.1.

ANIL KSHETARPAL, J

1. This case epitomizes a lamentable state of affairs. The revenue authorities are not implementing/giving effect to the decree passed by the courts below.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed
3. A small pedigree table is illustrated here to depict the inter-se relationship between the parties.-



4. Sheo Dutt was owner of 196 kanals and 19 marlas of land. After his death his three sons inherited the property in equal share. Sh. Yad Ram sold his entire share and there is no dispute about the aforesaid land.
- Sh. Bhagwana sold ¾ share out of the 1/3rd share of 196 kanals and 19

marlas he inherited from Sh. Sheo Dutt. Thus, he was left with only 1/12th share of 196 kanals and 12 marlas.

5. Sh. Dhanna, gifted his share of property to Sh. Sukh Lal on 01.10.1965. Sh. Bhagwana filed a civil suit no.458 dated 23.10.1968, challenging the correctness of the aforesaid gift deed executed by Sh. Dhanna. In the aforesaid suit, a compromise decree was passed on 07.07.1971, which reads as under:-

“As per statement made I allow the compromise as the parties have come to lawful compromise, so I allow the same. As per statement made I pass a decree for declaration to the effect that plaintiff is the owner of ½ share of the land in suit and is entitled to possession of the ½ share of the land in suit. The suit of the plaintiff about ½ share of the land is dismissed. No relief is claim against defendant no.2 to 4, so the suit against them is dismissed. The parties are left to bear their own costs.”

6. After the first suit was disposed of, the litigation stated for the second time.

7. Lila Ram etc. filed the civil suit claiming to be agnates of Sh. Bhagwana and Sh. Dhanna. In the aforesaid suit, Sh. Sukh Lal was also impeladed as defendant no.1. The civil suit was partly decreed by the trial court on 31.08.1995. In the first appeal, the decree passed by the trial court was modified and the First Appellate Court held as under:-

“It is ordered that the appeal deserves part success and the same is accordingly allowed partly by decreeing the suit in favour of plaintiffs/appellants by declaring them to have become owners in possession of 1/4th original share of Bhagwana in land measuring 05 kanalas 11 marlas as well as 1/8th previous share of Dhanna, which also fell into ownership and possession of Bhagwana (provided such share remained in alienated wholly or partly with him, then to that extent) by virtue of Civil Court decree dated 07.07.1971 Ex.DA in Civil Suti No.458 of 1968 titled Bhagwana Versus Sukh Lal in the total land measuring 196 kanals 19 marloas situated at village Nangal Jamalpur. Consequently, the impugned judgment

and decree of learned trial Court are set aside with acceptance of present appeal in the aforesaid manner. Parties are left to bear their own costs.”

8. The correctness of the aforesaid judgment and decree was affirmed in appeal by the High Court vide judgment dated 12.03.2007. Sh. Sukh Lal executed a registered Will in favour of his grandson Sh. Krishan Kumar. He filed an execution petition under Order XXI Rule 35 CPC which was dismissed by the Executing Court on the ground that the same has been filed beyond the prescribed period of limitation. The Executing Court calculated the limitation period from the decree dated 07.07.1971, while ignoring the subsequent litigation.

9. The First Appellate Court on re-appreciation of facts held that the suit property in the subsequent round was same and therefore, ordered issuance of warrants of joint possession.

10. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

11. The learned counsel representing the appellant contends that the first appeal on the part of Sh. Krishan Kumar was not maintainable because under Order XLIII CPC, an order passed under Order XXI Rule 35 CPC is not an appealable order. He submits that there is no decree in favour of Sh. Sukh Lal or Sh. Krishan Kumar.

12. On the other hand, the learned counsel representing the respondent submits that Sh. Sukhpal Lal or Sh. Krishan Kumar are not claiming any right, title or interest in the property inherited by Sh. Leela Ram or his successor in interest. He submits that the revenue record is required to be updated in order to permit Sh. Sukh Lal and his grand son Sh.

Krishan Kumar to enjoy the fruits of the judgment and decree passed by the

court in the year 1971, and also by the High Court on 12.03.2007.

13. This court has considered the submissions of the learned counsel representing the parties.

14. Though, there is some substance in the argument of the learned counsel representing the petitioner with regard to maintainability of the appeal, however, this court cannot overlook the fact that after two rounds of litigation, inter-se rights of the parties have been finally decided and the revenue record is required to be updated accordingly to implement the judgment of the civil court. The gift deed in favour of Sh. Sukh Lal dated 01.10.1965, was held valid upto the extent of $\frac{1}{2}$ share. The suit filed by Sh. Bhagwana to the extent of $\frac{1}{2}$ share was only decreed. Thus, Sh. Sukh Lal and thereafter his grandson Sh. Krishan Kumar are owners to the extent of $\frac{1}{2}$ share of the land which was the subject matter of gift deed executed by Sh. Dhanna in favour of Sh. Sukh Lal.

15. The correctness of the aforesaid gift deed has not been assailed in the second round of litigation. In these circumstances, the revision petition is disposed of with the modification that the revenue authorities shall give effect to the judgment and decree passed by the civil court on 07.07.1971, by updating the revenue record in favour of Sh. Sukh Lal and thereafter in favour of Sh. Krishan Kumar.

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

March 11, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO