

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

142

RSA-1704-1992 (O&M)
Date of decision: 21.05.2024

GURDIAL SINGH (DECEASED) THROUGH LRS. AND ANR.

..Appellants

Versus

KARTAR KAUR (DECEASED) THROUGH LRS. AND ORS.

..Respondents

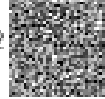
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harsh Aggarwal, Advocate
for the appellants.

Mr. Rajesh Bhatheja, Advocate
for respondent No.1.

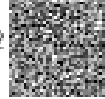
ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, defendant No.1 and 2 namely Sh. Gurdial Singh and Sh. Dev Singh assail the correctness of the judgment passed by the First Appellate Court, which in turn has reversed the judgment passed by the trial Court.
2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
3. Sh. Mal Singh son of Sh. Puran Singh was the owner of two different parcels of land located in villages Maluka and Kotha Guru. In village Maluka, he had 1/4th share in total land measuring 109 kanal and 3 marlas, whereas, in village Kotha Guru he had 1/4th share in the land measuring 23 kanal and 8 marlas. From his first marriage with Smt. Sada



Kaur, Smt. Kartar Kaur (a daughter), the plaintiff (respondent herein) was born. After the death of Smt. Sada Kaur, Sh. Mal Singh re-married Smt. Bachan Kaur. Sh. Mal Singh executed a registered Will on 31.05.1971, bequeathing his property in favour of his second wife i.e. Smt. Bachan Kaur on 31.05.1971 with the stipulation that after her death, the property will devolve upon his daughter i.e. Smt. Kartar Kaur.

4. Sh. Mal Singh passed away on 25.12.1979. Smt. Kartar Kaur filed civil suit on 02.12.1980 for grant of decree of declaration that she is owner of the property left behind by Sh. Mal Singh, which was dismissed on merits on 15.12.1982. It was held that Smt. Bachan Kaur became the complete owner of the property by virtue of Section 14(1) of the Hindu Succession Act, 1956 (hereinafter referred to as the '1956 Act'). On 10.01.1983, Smt. Bachan Kaur sold the property situated in village Maluka i.e. (1/4th share in land measuring 109 kanal and 3 marlas) in favour of Sh. Gurdial Singh, brother of Sh. Mal Singh. On 11.01.1983, Smt. Kartar Kaur filed first appeal challenging the judgment and decree dated 15.12.1982. On 14.11.1984, the counsel representing Smt. Bachan Kaur suffered statement that she will not sell the land without legal necessity. Smt. Kartar Kaur's counsel accepted the aforesaid statement and the appeal was dismissed as withdrawn. Subsequently, Smt. Bachan Kaur sold the property i.e. (1/4th share of the land measuring 23 kanal and 8 marlas) situated in village Kotha Guru in favour Sh. Dev Singh son of Sh. Gurdial Singh. Smt. Kartar Kaur filed fresh suit on 25.07.1986 for declaration that she is the owner of the property. The trial Court dismissed the suit, however, the First Appellate Court decreed the suit while declaring that sale deed dated 10.01.1983 with respect to the land located in village Maluka and sale deed dated 02.06.1986



with respect to the land located in village Kotha Guru shall not affect her rights.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the scanned copy of the requisitioned record.

6. The learned counsel representing the appellant has made the following submissions:-

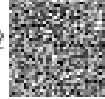
i. The sale deeds dated 10.01.1983 and 02.06.1986 have not been challenged.

ii. The subsequent suit filed by Smt. Kartar Kaur is not maintainable in view of Order XXIII Rule 3A of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC').

iii. It was permissible for Smt. Bachan Kaur to sell the property for legal necessity, which has been proved by deposition of marginal witness of the sale deed i.e. DW-1 Sh. Sukhdev Singh, Nambardar.

iv. The sale deed dated 10.01.1983 could not be set aside because Smt. Kartar Kaur had knowledge of the sale deed dated 10.01.1983 and Sh. Gurdial Singh never made a statement on 14.11.1984.

7. Per contra, the learned counsel representing the respondent submits that as per the statement of Smt. Bachan Kaur's counsel recorded on 14.11.1984, the sale deed dated 10.01.1983 shall not be binding on Smt. Kartar Kaur because it has not been proved that the aforesaid sale was for legal necessity.



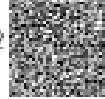
8. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties.

9. The plaintiff has filed suit for possession of 1/4th share in the entire property by way of partition. She was not the executant of the sale deeds dated 10.01.1983 and 02.06.1986. Section 31 of the Specific Relief Act, 1963 (hereinafter referred to as the '1963 Act') enables the executant to seek annulment/decision of the instrument, which includes sale deed, whereas, Section 34 of the 1963 Act enables the party to file a suit for declaration without challenging the document. The distinction between Section 31 and 34 is significant. A person who is not executant of the document is not required to file a suit for its annulment or decision. This distinction was noticed by a Full Bench in *Niranjan Kaur v. Nirbigan Kaur* 1982 PLR 127. Hence, the plaintiff was not required to file suit challenging the sale deeds.

10. The plaintiff has filed a suit for possession by way of partition. The relief of declaration is implicit therein because once she had sought relief of possession then she is in fact claiming that she is entitled to possession of the property on the basis of title.

11. With regard to the second argument of the learned counsel representing the appellant, it may be noted that on 14.11.1984, the appeal was not disposed of in terms of compromise/settlement so as to attract Order XXIII Rule 3A of the CPC. In substance, the order dated 14.11.1984 was a consent order passed by the First Appellate Court in terms of Order XII Rule 6 of the CPC. Hence, Order XXIII Rule 3A of the CPC is not applicable.

12. The next argument of the learned counsel representing the appellant is with regard to the legal necessity of Smt. Bachan Kaur. Except

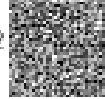


the statement of Sh. Sukhdev Singh, Nambardar, there is no evidence that Smt. Bachan Kaur had the legal necessity to sell the property in favour of Sh. Dev Singh son of Sh. Gurdial Singh, who was brother of Sh. Mal Singh. The aforesaid Nambardar has only stated that Smt. Bachan Kaur had necessity, however, no further evidence has been led.

13. There is some substance in the last argument of the learned counsel representing the appellant.

14. On 14.11.1984, Smt. Kartar Kaur has accepted the statement of Smt. Bachan Kaur's counsel. On careful reading of the aforesaid statement, it is evident that Smt. Bachan Kaur stated that she will not sell the property without legal necessity. Obviously, the sale deed, which had already been executed by her on 10.01.1983 in favour of Sh. Gurdial Singh with respect to land located in village Maluka would be deemed to have been excluded because she has not stated that the sale deed already executed by her would also stand nullified or annulled. Moreover, Sh. Gurdial Singh never made any statement. Sh. Gurdial Singh was impleaded as party in the appeal. Though, the learned counsel representing the respondent has submitted that the same counsel represented Sh. Gurdial Singh, however, in absence of specific statement of the counsel that the sale deed dated 10.01.1983, stands nullified. It will not be prudent to accept the contention of the learned counsel representing the respondents. The context in which the statement was made is required to be understood and appreciated.

15. Hence, the sale deed dated 10.01.1983 executed by Smt. Bachan Kaur in favour of Sh. Gurdial Singh was accepted as correct and genuine and excluded from challenge. However, Smt. Bachan Kaur has failed to lead evidence that she had legal necessity to sell the property in favour of Sh. Dev

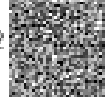


Singh on 02.06.1986. The First Appellate Court has erred in overlooking this distinction between the sale deeds dated 10.01.1983 and 02.06.1986.

16. On careful study of the judgment passed by the First Appellate Court, the following reason emerge:-

- i. By judgment and decree dated 14.11.1984, Smt. Bachchan Kaur admitted that there is only life interest in her favour and subsequently the property would vest in Smt. Kartar Kaur.
- ii. The decree passed by the trial Court merged into the one passed by the First Appellate Court and the sale deed executed by Smt. Bachan Kaur in favour of Sh. Gurdial Singh on 10.01.1983, is governed by doctrine of *lis pendens*.
- iii. In this case, Section 14(2) of the 1956 Act will apply as Smt. Bachan Kaur had no pre-existing right.

17. In the opinion of the Court, the First Appellate Court has erred in recording the conclusion. In fact, the First Appellate Court has not approached to the case in correct perspective or in other words failed to pose itself the correct question which requires adjudication. The sale deed dated 10.01.1983, was in existence on 14.11.1984, when Smt. Bachan Kaur's counsel suffered a statement, which was accepted by Smt. Kartar Kaur's counsel. In that litigation Sh. Gurdial Singh was a party. If the intent of the parties was to declare that sale deed dated 10.01.1983, would not bind the rights of Smt. Kartar Kaur, a specific recital would have been made. Once Smt. Kartar Kaur has felt satisfied with the statement of Smt. Bachan Kaur's counsel to the effect that she would not alienate the property without legal



necessity, the natural conclusion which in the opinion of this Court can be arrived at is that the correctness of sale deed dated 10.01.1983, was admitted by Sh. Kartar. The First Appellate Court has also erred in observing that the appeal being a continuation of suit, the judgment of the trial Court merged with the First Appellate Court's judgment. In fact, in this case, the First Appellate Court has not decided the appeal on merits. The appeal was disposed of in terms of the statement of the parties. In any case, the civil suit filed by Smt. Kartar Kaur was dismissed. On 14.11.1984, her appeal was disposed of in terms of settlement. Hence, apart from the settlement, the First Appellate Court in the year 1984 did not declare that the sale deed dated 10.01.1983 is bad or illegal. Similarly, the doctrine of *lis pendens* would not apply in case the appeal was disposed of in terms of settlement. The First Appellate Court has overlooked that in view of the statements of the learned counsel representing the parties, a contract came into existence. Hence, Section 52 of the Transfer of Property Act, 1882, shall not be applicable because the First Appellate Court did not decide the appeal on merits. The settlement would be operative prospectively unless intended to be operative retrospectively. In such circumstances, Sh. Gurdial Singh was required to be made part of the settlement. Hence, the intent of the parties was to save further sale of the property by Smt. Bachan Kaur, which obviously means that Smt. Bachan Kaur would be debarred from alienating remaining land without legal necessity. Hence, all the reasons assigned by the First Appellate Court are erroneous and, hence, set aside.

18. Consequently, the judgment passed by the First Appellate Court is modified to the extent that Smt. Kartar Kaur's suit qua possession of 1/4th share with respect to land measuring 109 kanal and 3 marlas located in

village Maluka shall stand dismissed, whereas, the decree passed by the First Appellate Court with respect to 1/4th share in the land measuring 23 kanal and 8 marlas located in village Kotha Guru is maintained.

19. With these observations, the appeal is partly allowed.
20. All the pending miscellaneous applications, if any, are also disposed of.

May 21st, 2024

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No