



In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 422 of 1993 (O&M)

Reserved On: 12.11.2024
Pronounced On: 17.12.2024

Jai Ram (Since Deceased) through his Legal Representatives and Others

... Appellant(s)

Versus

Hem Raj Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Rajinder Goel, Advocate
for the appellant(s).

Mr. Abhinav Sood and Mr. Vikram Singh, Advocates
for the respondents.

Anil Kshetarpal, J.

1. Factual Background

1.1 The filing and decisions of the Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh are governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

1.2 The correctness of the judgment and decree passed by the First Appellate Court, is assailed by the plaintiffs, which, in turn, has reversed the judgment and decree passed by the Trial Court. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to

be noticed.

1.3 Sadhu Ram son of Bishna son of Hira was the owner in possession of the suit property but he did not have any children being unmarried. During his life time, he suffered a consent Court decree in favour of the defendants who were minor at that point of time with respect to the suit property. The plaintiffs who are the distant relatives of Sadhu Ram filed a suit claiming that they are the nearest cognates of Sadhu Ram, whereas the defendants were not related to him. The decree was challenged on numerous grounds including fraud and impersonation by filing a suit for declaration to the effect that the plaintiffs are owners in possession of the suit property with a consequential relief of permanent injunction. The decree was challenged on various grounds including fraud and impersonation.

1.4 The defendants contested the suit while claiming that they were related to Sadhu Ram who during his life time, suffered a decree in favour of the defendants. It would be noted here that the defendants are the grandchildren of Budhu who was the distant cousin of Sadhu Ram. The Trial Court held that the plaintiffs failed to prove the fraud or impersonation and that the decree amounts to an oral gift which required registration. Thus, the suit was decreed. However, it was reversed by the First Appellate Court on the ground that the decree was based upon family settlement and the Trial Court erred in assuming that the decree resulted in gift of immovable property.

2. Arguments put forth by learned counsel representing the parties

2.1 Heard the learned counsel representing the parties, at length and

with their able assistance, perused the paper-book.

2.2 The learned counsel representing the appellants has submitted that:-

- I) The plaintiffs have not pleaded that there was any family settlement.
- II) It was also asserted that the previous decree was obtained by misrepresentation as the defendants are not the grandsons of Sadhu Ram.
- III) Through the judgment and decree dated 08.03.1978, the defendants have, for the first time, acquired rights and, therefore, the decree requires registration.
- IV) The decree, in substance, amounts to gifting of immovable property which required registration.
- V) The plaintiffs are proved to be in possession of the property as held by the Trial Court which has not been reversed by the First Appellate Court.
- VI) The defendants were minors and hence, there could not be any valid contract between them and Sadhu Ram.
- VII) The defendants are not proved to be the nearest collaterals of Sadhu Ram, whereas the plaintiffs are proved to be his nearest collaterals comparatively.

2.3 Per contra, the learned counsel representing the respondents, while defending the judgment and decree, relies upon the judgment passed

in ***Gurcharan Singh and Others v. Angrez Kaur and Others 2020(2) RCR***

(Civil) 696, contends that the consent decree does not require any registration.

3. Analysis and Discussion

3.1 This Court has considered the submissions of the learned counsel representing the parties and perused the judgments passed by both the Courts below along with the requisitioned record.

3.2 Ex.PW.4/A is the copy of the plaint filed by the defendants in Civil Suit No. 72 of 1978. In the aforesaid suit, the plaintiffs (defendants herein) have claimed that about a year ago before the filing of the suit, in the meeting of the respectable family members, common relatives and friends and the service rendered by the plaintiffs' father, the defendants promised to transfer his land in favour of the defendants (plaintiffs in the previous suit) in equal share and possession of the same was delivered to the defendants. Sadhu Ram admitted the defendants' (plaintiffs in the previous suit) claim in the suit while filing written statement. The Court also recorded the deposition of Sadhu Ram as well as his counsel to this effect. Thus, the appellants' counsel is incorrect in observing that in the previous suit, the defendants (the plaintiffs in the previous suit) did not allege any family settlement. Once it is asserted that about a year ago in the gathering of the respectable family members, common relations and friends, a settlement took place, then the family settlement has been alleged which was admitted by Sadhu Ram.

3.3 The second argument of the learned counsel representing the appellants is again not factually correct. On a bare look at the family tree, it

becomes evident that the defendants herein (the plaintiffs in the previous

suit) are the grandchildren of Budhu who was the cousin of Sadhu Ram. In other words, in relations, the defendants became grandchildren of Sadhu Ram. Hence, the assertions made in the plaint filed in the year 1978 are not incorrect.

3.4 Similarly, there is no substance in submission No.(III) because the decree has not resulted in transfer of the property. It is evident from the assertions made in the plaint that a family settlement has been arrived at in the year 1977 which was acknowledged to be correct in the suit. Moreover, a decree passed by the Court does not require registration. This issue has now been finally settled by the Supreme Court in *Khushi Ram and Others v. Nawal Singh and Others (2021) 16 SCC 279*.

3.5 Similarly, the argument No. (IV) lacks substance because it is not a case of gift of the property. Somewhere in the year 1977, there was a family settlement in which the defendants (the plaintiffs in the previous suit) exclusively became owners by virtue of family settlement. Hence, it cannot be treated as a gift.

3.6 The next argument of the appellants' counsel is also without substance because there was no specific issue with respect to possession of the property. On the basis of the pleadings of the parties, the Trial Court has culled out the following issues:-

- “1. *Whether the plaintiffs are the only nearest collaterals of Sadhu? OPP*
2. *Whether decree dated 8.3.78 is illegal, void and not binding on the plaintiff for the reasons alleged in para 5*

of the plaint? OPP.

3. *Whether the suit is not maintainable in view of the preliminary objection No.1?OPD.*
4. *Whether the plaintiffs have no locus standi to file the suit ? OPD*
5. *Whether the defendants are grand sons of Sadhu (deceased)? OPD.*
6. *Relief.”*

Hence, the plaintiffs are not proved to be in possession of the property particularly when there was no issue on that aspect of the matter.

3.7 Similarly, the argument No.(VI) of the appellants' counsel has no substance because the consent decree is not a contract between the parties. Moreover, any contract entered into for the benefit of the minors is binding unless the minors repudiate the same.

3.8 The last argument of the appellants' counsel also lacks substance because the plaintiffs are not proved to be the first or second class heirs. They are only claiming to be comparatively the nearest collaterals than the defendants. Sadhu Ram was the last male holder of the property. It has been found by the First Appellate Court that Sadhu Ram used to reside with the defendants who are not the strangers. Hence, the plaintiffs cannot claim any preferential rights because Sadhu Ram, during his life time chose to suffer consent decree.

4. Decision

4.1 Keeping in view the aforesaid facts, no ground is made out to

interfere with the findings of facts arrived at by the First Appellate Court.

Hence, the present appeal is dismissed.

4.2 The miscellaneous application(s) pending, if any, shall stand disposed of.

December 17, 2024

“DK”

(Anil Kshetarpal)

Judge

Whether speaking/reasoned

:Yes/No

Whether reportable

: Yes/No