



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

138

RSA-1886-1992 (O&M)

Date of Decision: 11.09.2024

Satbir

..... Appellant

Versus

Ram Mehar (deceased) through LRs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vijay Kumar Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate and
Mr. Manoj Chahal, Advocate and
Mr. Piyush Aggarwal, Advocate and
Mr. Pankaj Gautam, Advocate
for the appellant.

Mr. Sanjay Majithia, Sr. Advocate with
Mr. Sumit Sinha, Advocate and
Mr. R.P. Daaria, Advocate for the respondents.

VIKAS BAHL, J (ORAL)

1. Challenge in the present appeal is to the judgment of the First Appellate Court dated 05.09.1992 vide which the appeal filed by respondent Nos.1 to 3/plaintiffs, has been allowed and judgment and decree dated 13.10.1988 passed by the trial Court has been set aside and the suit filed by the plaintiffs/respondent Nos.1 to 3 has been decreed in their favour along with in favour of defendant Nos.2 to 19.

2. Learned senior counsel for the appellant has submitted that the finding of the 1st Appellate Court on issue No.4 on the aspect of Will is absolutely illegal. It is argued that it has been wrongly observed that the execution of the Will is to be proved by producing two marginal/attesting witnesses, whereas, it is settled law that the production of one



marginal/attesting witness is enough. In support of his arguments, learned senior counsel for the appellant has relied upon a judgment dated 17.12.2002 of the Hon'ble Supreme Court in the case titled as "***Janki Narayan Bhoir Vs. Narayan Namdeo Kadam***", reported as **2003(2) SCC 91**. It is further argued that in the present case, even if the suit is taken on its face value, then also a simpliciter suit for injunction is not maintainable and the injunction could not have been granted as has been granted by the 1st Appellate Court.

3. Learned Senior Counsel for the appellant has vehemently argued that in the present case, the suit as well as judgment of the First Appellate Court deserve to fail on two preliminary points. It is submitted that a perusal of the suit would show that a simplicitor suit for injunction had been filed and even in the said suit, it had been pleaded that khewats of the parties were joint and that the plaintiffs were in possession of the suit land along with other co-sharers. It is submitted that in the entire plaint, it has not even been remotely stated that the plaintiffs were in exclusive possession of any part of the suit land or that the suit land was ever partitioned or that defendant No.1-present appellant was not in possession of the suit land and thus, the question of granting injunction in favour of the plaintiffs/defendant Nos.2 to 19 does not arise and the judgment of the First Appellate Court granting the said injunction is illegal. It is further submitted that even as per the case of the plaintiffs, defendant No.1 was also a co-sharer in the entire land and no injunction could have been granted against a co-sharer more so when the plaintiffs have not even remotely alleged that they were in exclusive possession of any portion/part of the land. In support of the said arguments, learned counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court in the case of **Sakhahari Parwatrao Karahale and another Vs. Bhimashankar Parwatrao Karalhe** reported as **2002(9) SCC 608**, and also a judgment of the Full Bench of this Court in case of **Bhartu Vs. Ram**



Sarup reported as 1981 PLJ 204. It is further submitted that the suit for permanent injunction itself was not maintainable inasmuch as it is not disputed between the parties that the mutation with respect to the land in question was sanctioned in favour of Saroopi wife of Mandroop vide mutation No.3491 which was passed on 30.11.1959 and it is the said Saroopi who was shown as owner of the property in question and had further executed the registered Will dated 04.04.1966 (registered on 07.04.1966) in favour of the present appellant/defendant No.1. It is submitted that without filing a suit for declaration challenging the said transfer of the property firstly in favour of Saroopi and thereafter in favour of the present appellant, the present suit for simplicitor injunction is not maintainable. It is submitted that the property in fact had been transferred in favour of the present appellant/defendant No.1 vide mutation No.4367 dated 07.08.1975 and the said aspect has not been challenged in the plaint. It is further stated that in para 6(a) of the plaint, it has been averred that Saroopi was not owner of the suit land after kareva of Harkaur and that the land in question had been reverted to the ancestors of the parties, but no declaration was sought on the said aspect. It is further submitted that both the Courts below including First Appellate Court had in fact held that Saroopi was the owner of the suit land and the said finding of the First Appellate Court has not been challenged on behalf the plaintiffs and thus, the suit deserves to be dismissed on the said ground also. In support of their arguments, learned Senior Counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in case of Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs and others, reported as 2008(4) SCC 594.

4. Learned counsel for the appellant has further submitted that since the property had been transferred in favour of Sarupi and Sarupi continued to be in possession of the property till 1975 which was after the coming into force



of the Succession Act, 1956 and even if she was stated to be a limited owner, her rights would fructify into full ownership as per the provisions of Section 14(1) of the Hindu Succession Act. Learned Senior Counsel for the appellant has further submitted that several material issues/aspects have not been considered by the First Appellate Court.

5. Learned senior counsel for the respondents-plaintiffs has submitted that as per Hindu law, after the death of a son, the power to adopt is vested in his widow, for continuing the family line and the mother's power to adopt would extinguish permanently and would not revive on re-marriage of her son's widow. It is further submitted that in view of the above said proposition of law, Sarupi, who was the mother of the deceased son Chatri was not competent to adopt defendant No.1 and the property would revert back to the estate of Mandrup and will be inherited by the reversioners/collaterals and the plaintiffs being a collateral would have a right to joint possession. It is further submitted that Sarupi would have no right to either adopt or to Will the property as the said Sarupi would at best have life estate and not full ownership. It is submitted that thus the observations made in paragraph 17 by the First Appellate Court to the effect that the land in question had gone to Sarupi are not in accordance with law. It is argued that as far as the objections raised by learned senior counsel for the appellant on the maintainability of the suit are concerned, inasmuch as the suit for declaration had to be filed in the said circumstances, it is submitted that in order to do complete justice, even a formal application for amendment of the plaint can be filed and the same could be considered in accordance with law. Learned senior counsel for the respondents has relied upon the judgment of a Coordinate Bench of this Court in the case of '*Uttam Singh Vs. Partap Singh*' reported as *1991(1) PLR 505* in support of his arguments.



6. During the course of arguments, learned senior counsel for the appellant as well as senior counsel for the respondents have jointly pointed out that in the judgment of the First Appellate Court dated 05.09.1992, several material issues have either been missed out or have been wrongly considered and thus both the senior counsels have jointly prayed that the present appeal be partly allowed and the judgment of the First Appellate Court dated 05.09.1992 be set aside and the matter be remanded back to the First Appellate Court to decide the appeal afresh.

7. Keeping in view the above said facts and circumstances and also the joint prayer made on behalf of the appellants as well as the respondents and since this Court is convinced that the material aspects/issues have either been missed or have not been decided in accordance with law by the First Appellate Court, the present appeal is partly allowed and the judgment of the First Appellate Court dated 05.09.1992 is set aside and the case is remanded back to the First Appellate Court to decide the same afresh.

8. It is made clear that this Court has not given any final opinion on the merits of the rival contentions raised by the appellant as well as the respondents and it would be open to both the parties to raise all the issues/arguments before the First Appellate Court which would consider the same while finally adjudicating the case.

11.09.2024
naresh.k/pawanD.Bansal

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No