

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1129-1989 (O&M)
Reserved on: 19.03.2024
Date of decision: 18.04.2024

PIARA SINGH (DECEASED) THROUGH LRS

..Appellant

Versus

LACHHMAN SINGH (DECEASED) THROUGH LRS AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L. Sarin, Sr. Advocate
with Ms. Himani Sarin, Advocate
for the appellant.

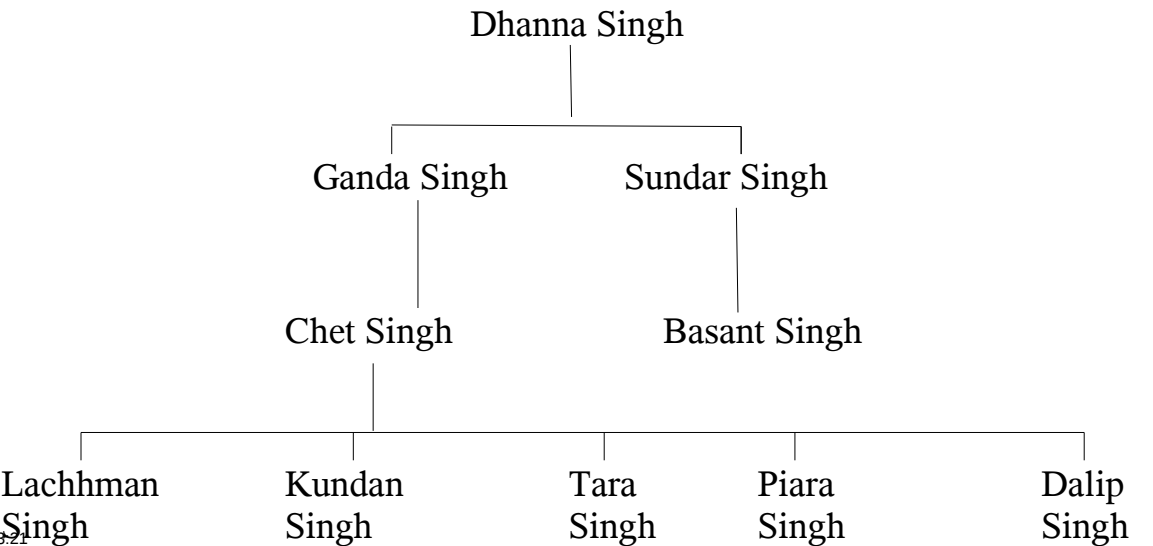
Mr. Harjot Singh Bedi, Advocate
for respondents.

ANIL KSHETARPAL, J.

1. Brief facts of the case:-

1.1 In this regular second appeal, the defendant (Sh. Piara Singh) assails the correctness of First Appellate Court's judgment, which in turn has reversed the judgment passed by the trial Court.

1.2 For better comprehension of the inter se relationship between the parties, a small pedigree of the family is demonstrated as under:-



1.3 In order to comprehend the issues involved in the present case, relevant facts, in brief are required to be noticed.

1.4 Sh. Ganda Singh and Sh. Sundar Singh are sons of Sh. Dhanna Singh. In other words, the common ancestor between the parties is Sh. Dhanna Singh. Sh. Ganda Singh during his lifetime gifted the property to Sh. Chet Singh vide mutation No.294 dated 03.12.1947, which was attested by the Assistant Collector on 28.02.1948. During the lifetime, Sh. Chet Singh and his cousin Sh. Basant Singh partitioned the property. Sh. Chet Singh had five sons as depicted in the pedigree. His son Sh. Dalip Singh who was unmarried and issueless served in the Indian Army and attained martyrdom. Sh. Chet Singh during his lifetime executed two sale deeds in favour of his son Sh. Piara Singh. Sh. Lachman Singh, Sh. Kundan Singh and Sh. Tara Singh filed a civil suit on 02.08.1984, seeking declaration to the effect that the sale deeds dated 19.11.1982 and 28.03.1984, executed by Sh. Chet Singh in favour of Sh. Piara Singh are illegal, null and void and not binding on the rights of the plaintiffs. In substance, the plaintiffs claimed that the property is ancestral and it has been sold without a legal necessity by Sh. Chet Singh who was the karta of the joint Hindu family and the sale is also made without consideration. The family at the time of sale had no legal necessity and Karta had sold a parcel of land with a garden for an amount of Rs.7,000/- and he is hell-bent to alienate remaining land measuring 21 kanal and 9 marlas. In the aforesaid suit, Sh. Chet Singh and Sh. Piara Singh filed a joint written statement asserting that the suit land is not the ancestral property and it was owned by Sh. Chet Singh. Plaintiff No.1 namely Sh. Lachhman Singh never served defendant No.1 and the plaintiffs misbehaved with him. Sh. Chet Singh asserted that he also apprehends danger to his life from the hands of his three sons who are

plaintiffs. It was also asserted that he has executed two sales deeds in favour of his son Sh. Piara Singh and the sale consideration has been distributed by defendant No.2 amongst the plaintiffs namely Sh. Lachhman Singh, Sh. Kundan Singh and Sh. Tara Singh but they are not satisfied with the same. The existence of any joint Hindu family property was denied and it was alleged that the plaintiffs are living separately from Sh. Chet Singh. The parties are 'Jaats' by caste and they are governed by custom in the matters related to alienation.

1.5 The aforesaid suit was withdrawn when one of the plaintiff made the statement, 'Ex.D-6' to the effect that "The suit should be permitted to be withdrawn and if need be, I will file a fresh suit." On the aforesaid statement of Sh. Lachhman Singh, the suit was dismissed as withdrawn on 14.11.1984, with the following order:-

"In view of the above statement this suit is dismissed as withdrawn with no order as to costs. Documents be returned."

1.6 On 29.11.1984, the same plaintiffs namely Sh. Lachhman Singh, Sh. Kundan Singh and Sh. Tara Singh again filed a suit for possession of land measuring 22 kanal and 19 marlas, which was the subject matter of two sale deeds executed by Sh. Chet Singh in favour of Sh. Piara Singh. In this subsequent suit, the plaintiff asserted that the suit property is ancestral and it has been sold by the Karta without legal necessity. Defendant Sh. Piara Singh contested the suit while claiming that the present suit is barred under Order XXIII Rule 1(4) of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'). It was also asserted that the property is not ancestral property as Sh. Chet Singh had received the property by virtue of a gift from Sh. Ganda Singh, his father in the year 1947. The trial Court dismissed the suit on both the accounts namely, the

suit is barred under Order XXIII Rule 1(b) and the property was a self acquired property. However, the First Appellate Court has held that subsequent suit is based upon inheritance, and therefore, the subject matter is substantially different. The suit property is ancestral and coparcenary property, hence, Sh. Chet Singh's alienation beyond his share is not binding on the rights of the plaintiffs. In substance the First Appellate Court has held that Sh. Piara Singh would get $\frac{2}{5}$ th share, whereas, the plaintiffs Sh. Lachhman Singh, Sh. Kundan Singh and Sh. Tara Singh are entitled to $\frac{3}{5}$ th share in the suit property as per the rules governing the succession.

2. Arguments put forth by the learned counsel representing the parties:-

2.1 This regular second appeal was admitted for regular hearing, and it has come up for final disposal after a period of 35 years.

2.2 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned lower Court record.

2.3 On the request of the Court, the learned counsel representing the parties have also filed their respective written submissions, which read as under:-

“Written submissions on behalf of the appellants:-

“Respectfully Showeth:

:This is a defendant-appellants' appeal against a judgment of reversal.

D). The first question of law pertains to the suit being barred by Order 23 Rule 1 (4).

- Having withdrawn the first suit without liberty to file a fresh one on same cause of action, the present suit is barred.

- Reference may be made to para 5 of the Trial Court's Judgment at Page 107.

- This has wrongly been reversed by the Lower Appellate Court in Paras 9 & 10 at Page 27.

LEGAL SUBMISSIONS

i). Both suits for 22K 19M only i.e. land covered by the two sale deeds made by Chet Singh in favour of Piara Singh only.

- Chet Singh had also left more land (not covered by the sales) as mentioned in the previous Written Statement Ex. D-4 (at Pg. 95 of

the record) - Para 3.

ii). Both suits based on challenge to the 2 sale deeds Ex. D-1 & Ex. D-2.

- Inheritance has no relevance till sale deeds are set-aside.

- In both the suits, the sale deeds had to be set-aside before any relief could be granted to the plaintiff.

- So, 2' suit barred. - reference may be made to page 7 of these written submissions.

- Reliance on **1933 Lah 943** is wrong.

1933 Lah 943

Judgment No.A

(Ali Muhammad V. Karim Baksh & ors.) (Para 17)

- That was a case where a sale by a widow was challenged the ground sale is NOT binding after death of widow - declaration was sought on behalf of ALL revisioners.

- When the widow died, the suit was withdrawn.

- H.C. held on death of widow, plaintiffs sought possession - on their own behalf.

- Reference may be made to Page 44 Col. 1.

- In present case in both cases, plaintiff has to prove the 2 sale deeds are bad-inheritance, makes no difference.

- Fully covered by Order 23 Rule 1 (4)

II). ON MERITS:

: Both sales Ex. D-1 & Ex. D-2 are valid.

i) The property is NOT ancestral. (In fact, it has to be shown it is coparcenary)

- To be co-parcenary it has to pass through 3 generations - here there is no such evidence.

2016 Pb. & Hry 192 (A.G. Masih J.)

Judgment No.1

(Kamlesh Devi V Mangat Ram & Ors.)

(Case of gift)

(ii) Coparcenary nature to be proved by documentary evidence that inherited by father to son to grandson

2011 (1) Supreme Today 574

Judgment No.2

(Saroja V. Santhilkumar & Ors.)

(Para 12)

- Here, there is no such evidence.

2016 (3) PLR 721 (Amit Rawal J.)

Judgment No.3

(Kulwant Singh V. Harbhajan Singh & Ors.) (Paras 4 & 5)

- Property to be proved to be ancestral by documentary evidence.

- No presumption property is Joint Family Property.

2010 (11) SCC 777

Judgment No.4

(Sameer Kumar Pal & Anr. V.

(Paras 10 & 11)

Sheikh Akbar & Others)

- Lower Appellate Court holds to the contrary at page 33 top and at page 41 top.

- No presumption property is Joint Family Property.

(iii) Only thing proved in the present case is gift from Ganda Singh to Chet Singh - then sale by Chet Singh to Piara Singh.

- It is essential to prove that property was co-parcenary in hands of Ganda Singh to hold it to be ancestral.

- No such evidence

1980 Ph. 345*(Smt. Ram Kali & Anr. V. Pardip Kumar & Others)***Judgment No.5***(Paras 3 & 6)*

- Where it was held that land not ancestral in hands of vendor who sold to son - it cannot be challenged.

1953 S.C. 495*(C.N. Arunachala Mudaliar V. C.A. Muruganatha Mudaliar & Anr.)***Judgment No.6***(Paras 11 to 15)*

- Merely because property has come by gift from ancestor will not make property ancestral.

- It has to be proved to be ancestral in the hands of donor
Reliance on 1933 Lah 539 is wrong.

1933 Lah 539*(Pars Ram V. Kher Singh & Ors.)***Judgment No.B**

- This was a case of a gift of ancestral property. Gift does not make it non- ancestral.

Similarly,

1926 Lah 171*(Khizar Hayat & Anr. V. Allah Yar Shah)***Judgment No.C***(Page 41)*

- Reference may be made to top page 41.

- Gift of non-ancestral will not make it ancestral.

(iv) The onus is on the plaintiff to show it is ancestral - not the other way around.

- Reference may be made to top of page 41.

(v) Total misreading of written statement, Ex. D-4 - paras 1 & 5.

- Reference may be made to the bottom of page 33 of the paper book.

- Actually, written statement says "exclusively owned by Chet Singh"

III). : The Lower Appellate Court wrongly holds sale deed to be without consideration.

- Reference may be made to para 14 at page 41 of the paper book.

-This is totally contrary to the facts.

(i). In earlier suit against Chet Singh & Piara Singh

- Both had said money received.

- Reference may be made to the written statement Ex. D-4 at pg. 95 of the record - para 3.

(ii). Ex. D-2 - recites Rs. 10,000/- paid before Sub-Registrar

(iii). Ex. D-1 - says Rs. 22,000/- already received.

- No evidence that these recitals are incorrect.

It is therefore, respectfully prayed that the judgment and decree of the Lower Appellate Court be set-aside, the suit of the plaintiffs-respondents be dismissed and the present appeal be allowed with costs throughout.

It is also prayed before this Hon'ble Court that this Court may pass any order which it may deem fit in the facts and circumstances of the present case, in the interest of justice."

Written submissions on behalf of the respondents:-

"1. That Ganda Singh had ancestral property which he gave

to Chet Singh who was his only son and thus the land in the hand of Chet Singh was ancestral in nature.

2. That Chet Singh had four sons namely Lachhman Singh, Kundan Singh, Tara Singh and Piara Singh.

3. That Chet Singh executed one sale deed of 8K-9M in favour of Piara Singh on 19.11.1982 (Ex. D-1). Similarly, Chet Singh executed second sale deed in favour of Piara Singh of 14K-10M on 28.03.1984. Both these sale deeds were without any consideration and as per the recital in the sale deeds itself it was clearly mentioned in the first sale deed that he will take the amount for the daily expenses from his son and in the second sale deed it was mentioned that he has taken the amount for his expenses. Thus, nothing has been paid which can be termed as consideration for getting these sale deed executed.

4. That three sons namely Lachhman Singh, Kundan Singh and Tara Singh filed Civil Suit No.614 of 1984 wherein the said sale deeds were challenged, under a suit for declaration which was filed against their father Chet Singh and brother Piara Singh.

During the pendency of this civil suit Chet Singh expired in October, 1984. The said civil suit was then withdrawn by the three sons on 14.11.1984 by making a statement that the present suit be allowed to be withdrawn to file afresh, which the Hon'ble Court allowed vide order dated 14.11.1984 (Ex. D-5).

5. That the three sons then filed Civil Suit against the Piara Singh which was now a suit for possession of land measuring 22K-19M which was illegally given by Chet Singh to Piara Singh under the sale deeds when the said land was ancestral in nature and the same could not have been given by Chet Singh. On the pleading of the parties issues were framed on which the parties led their evidence.

6. That to prove the issues of the onus of which was on the plaintiff, they produced PW-1 Lachhman Singh, PW-2 Basant Singh and PW-3 Charan Singh. A copy of the mutation No.769 dated 18.08.1965 was produced as Ex. P/2 which proved the fact that a family partition was made between Chet Singh and Basant Singh who was the son of Sundar Singh who was the brother of Ganda Singh. Pedigree table is Ex. P-4. Another documents Ex. P-3 is the copy of mutation No.294 dated 03.12.1947 vide which Ganda Singh on his verbal statement has gifted his land to his only son but in this document there is no recital to the effect that for giving the gift Ganda Singh intended to make Chet Singh as the absolute owner or free to dispose of the same in any way he liked. As such it was proved that the land was ancestral in nature and was not a self acquired property of Chet Singh.

7. That the defendant - Piara Singh produced DW-1 Gurdial Singh Deed writer, DW-2 Attesting Witness, and himself appeared as DW-3. From all the evidence produced the same was only with regard to the sale deeds executed by Chet Singh but nothing was brought to show that the land was self acquired and Chet Singh had full right to dispose of the same as he liked.

8. That the Ld. Trial Court dismissed the Civil Suit. The first issue though was framed initially that the suit is barred by

principle of res-judicate whereas the issue was changed to whether the suit is barred under Order 23 Rule 4 (b) CPC. This issue was decided against the plaintiffs while holding that it is between the same party regarding the same land. The main and the primary issue No.2 was also wrongly held that the land in dispute is not ancestral. The civil suit was dismissed vide judgment and decree dated 15.01.1987.

9. That aggrieved by the illegal judgment decree passed by the Ld. Trial Court, the plaintiffs filed the appeal before the Ld. First Appellate Court. The Ld. First Appellate Court vide its judgment and decreed dated 11.03.1989 accepted the appeal and set aside the judgment and decreed passed by the Ld. Trial Court and held that the land be ancestral Co-parcenary property, Chet Singh was entitled to 1/5th share which he could gift or sale and thus granted the plaintiff the decree of possession to the extent of 3/5th share in the suit land and remaining 2/5th share to Piara Singh - Defendant No.1.

10. That during the pendency of the present appeal it was found that the finding given on issue No.1 by the Ld. Trial Court was illegal as no such issue was framed by the Court. As such while recasting the issue No.1 as "whether the suit is barred under Order 23 Rule 1 CPC? OPD" The Ld. Trial Court was asked to give fresh finding on the said issue. The Ld. Trial Court after considering the all the aspect at this stage vide its order dated 24.08.1988 returned the finding of this issue against the defendant and in favour of the plaintiff. As such now in the present RSA the said issue is not under consideration as though the same was against the defendant but the judgment was in his favour and this issue was never challenged in appeal and therefore cannot be taken up in regular second appeal.

11. That issue No.2 as to whether the land was ancestral, the Ld. Appellate Court carefully perused the documentary evidence i.e., Ex. P-2 which legally shows that family partition was made between Chet Singh and Basant Singh which proves that the land now in dispute fell in the share of Chet Singh. Thus, it amply proved that the land is ancestral further it has also been recorded by the Ld. Appellate Court that Piara Singh - defendant as DW-3 did not claim that the suit land was not ancestral in the hands of Chet Singh. Even in the previous suit filed when the written statement was filed it was not pleaded by Chet Singh or Piara Singh that it was self acquired property of Chet Singh. Rather Basant Singh PW-2 is the son of Sundar Singh and said Sundar Singh was brother of Ganda Singh vide pedigree table Ex. P-4 and the family partition made between Chet Singh and Basant Singh and thereafter Ex.P-2 is the copy of the mutation which shows the share of land after family partition which fell in favour of Chet Singh. Further, Ex. P-3 which shows that Ganda Singh made oral gift to Chet Singh there also there was nothing to show that Ganda Singh by such oral gift was making Chet Singh as the absolute owner, free to dispose of the same in any way he liked. Under these circumstances and evidence the findings of issue No.2 of the Ld. Trial Court was reversed by the Ld. Appellate Court and held the suit land was ancestral co-parcenary property in the hands of Chet Singh qua his son.

12. That the issue with regard to sale deeds was also

considered by the Ld. Appellate Court and it was found from going through the sale deeds which were Ex. D-1 and D-2 that there is no evidence that anything was ever paid to Chet Singh by the defendant - Piara Singh and thus it was held that the sale in favour of the defendant was without consideration and legal necessity and not binding upon the plaintiffs.

13. That the Ld. Appellate Court while accepting the appeal has nowhere set aside the sale deed as those were never challenged in the civil suit which was for possession of the land measuring 22K-18M and held that the land being ancestral property Chet Singh was having 1/5th share and thus the sale extent to 4/5th share is void and granted the plaintiffs decree of possession to the extent of 3/5th share in the suit land. Thus, the judgment and decreed passed by the Ld. First Appellate Court is absolutely legal and does not suffer from any illegality or perversity and is therefore is required to be upheld and the regular second appeal filed by the appellant be dismissed.”

3. Discussion by this Court:-

3.1 In the opinion of the Court, the following issues need adjudication:-

- i. Whether the present suit is barred under Order XXIII Rule 1(4) of the CPC?
- ii. Whether the suit property in the hands of Sh. Chet Singh was ancestral, precluding him from alienating the property more than his 1/5th share?

3.2 To delve deeper into the concept of the maintainability of the fresh suit, Order XXIII Rule 1(4), needs careful scrutiny and the provision is extracted hereunder:-

“ORDER XXIII 1. Withdrawal of suit or abandonment of part of claim.- (1).....

(2).....

(3).....

(4) Where the plaintiff- (a)

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.”

3.3 In this case, the copy of the previous suit filed by the plaintiffs

two sale deeds executed by late Sh. Chet Singh on 19.11.1982 and 28.03.1984 in favour of the appellant Sh. Piara Singh on the ground that the property is ancestral, and it has been sold without legal necessity. Sh. Chet Singh was the Karta of the Joint Hindu Family. The sale was executed without consideration. Sh. Chet Singh had no legal necessity because he had already sold a parcel of land on which garden has been developed for an amount of Rs. 7,000/- when there was requirement.

3.4 In the subsequent suit filed on 30.11.1984, the same plaintiffs have prayed for possession of land measuring 22 kanal and 19 marlas, which was the subject matter of the same sale deed. In the suit, the plaintiffs alleged that cause of action accrued to them a week before the defendant finally refused to admit the claim of the plaintiffs. Thus, the First Appellate Court was factually incorrect in observing that the subsequent suit was based upon inheritance because the cause of action for the subsequent suit arose when succession opened after the death of Sh. Chet Singh. In this suit also, the plaintiffs allege that the property is ancestral and has been sold without legal necessity. When the previous suit was withdrawn, no permission to file the fresh suit on same cause of action was either prayed for or granted by the Court.

3.5 On close examination of Order XXIII Rule 1(4) of the CPC, it is evident that the statute has clearly used the expression 'fresh suit' in respect of such subject matter or such part of the claim. The word 'subject matter' has a wider connotation and it cannot be confined to only property. However, it has reference to the right, which the plaintiff seeks to enforce. The subject matter consists of series of acts and transactions, which form the basis of the suit. In the previous suit, the plaintiffs claimed that the suit property is ancestral property, which has been sold without legal necessity,

and Sh. Chet was karta of the joint Hindu family. In the subsequent suit also, the foundation of plaintiffs case is based upon the fact that the suit property was ancestral. Hence, the subject matter of the previous suit and the subsequent suit is explicitly common. The cause of action for the suit filed by the plaintiffs has not arisen after the death of Sh. Chet Singh. In fact, Sh. Chet Singh's death has not made any difference in the claims of the plaintiffs.

3.6 The Supreme Court in **Vallabh Das Vs. Dr. Madan Lal, AIR 1970 (SC) 987**, has examined Order XXIII Rule 1 of the CPC in detail. The relevant portion is extracted hereunder:-

“Rule 1, Order 23, Code of Civil Procedure empowers the courts to permit a plaintiff to withdraw from the suit brought by him with liberty to institute a fresh suit in respect of the subject-matter of that suit on such terms as it thinks fit. The terms imposed on the plaintiff in the previous suit was that before bringing a fresh suit on the same cause of action, he must pay the costs of the defendants. Therefore we have to see whether that condition governs the institution of the present suit. For deciding that question we have to see whether the suit from which this appeal arises is in respect of the same subject-matter that was in litigation in the, previous suit. The expression "subject-matter" is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the plaintiff seeks to enforce. That expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said that the subject-matter of the second suit is the same as that in the previous suit. Now coming to the case before us in the first suit Dr. Madan Lal was seeking to enforce his right to partition and separate possession. In the present suit he seeks to get possession of the suit properties from a trespasser on the basis of his title. In the first suit the cause of action was the division of status between Dr. Madan Lal and his adoptive father and the relief claimed was the conversion of joint possession into separate possession. In the present suit the plaintiff is seeking possession of the suit properties from a trespasser. In the first case his cause of action arose on the day he got separated from his family. In the present suit the cause of action, namely, the series of transactions which formed the basis

of his title to the suit properties, arose on the death of his adoptive father 'and mother. It is true that both in the previous suit as well as in the present suit the factum and validity of adoption of Dr. Madan Lal came up for decision. But that adoption was not the cause of action in the first nor is it the cause of action in the present suit. It was merely an antecedent even which conferred certain rights on him. Mere identity of some of the issues in the two suits does not bring about an identity of the subject matter in the two suits. As observed in Rakhma Bai v. Mahadeo Narayan, the expression "subject matter" in Order 23, Rule 1, Code of Civil Procedure means the series of acts or transactions alleged to exist giving rise to the relief claimed. In other words "subject matter" means the bundle of facts which have to be proved in order to entitle the plaintiff to the relief claimed by him. We accept as correct the observations of Wallis C.J. in Singa Reddi v. Subba Reddi, that where the cause of action and the relief claimed in the second suit are not the same as the cause of action and the relief claimed in the first suit, the second suit cannot be considered to have been brought in respect of the same subject matter as the first suit."

3.7 The First Appellate Court has relied upon a Division Bench judgment in **Ali Muhammad Vs. Karim Baksh, AIR 1933 Lahore 943.**

However, the aforesaid judgment of Division Bench is not applicable to the facts of the case at hand.

3.8 Hence, the second suit filed by the plaintiffs was barred under clause 4 of Rule 1 of Order XXIII of the CPC as the subject matter involved in both the suits is identical.

3.9 With respect to the second issue, it may be noted here that the plaintiffs in this suit have not asserted that there existed a coparcenary property. Their case is based upon the plea that the property is ancestral, and it has been sold without any legal necessity. It may be noted here that the property was received by Sh. Chet Singh pursuant to oral gift executed by Sh. Ganda Singh, his father. The property did not come in the hands of Sh. Chet Singh by mode of natural succession. Moreover, there is no evidence on record that the property in the hands of Sh. Ganda Singh was ancestral.

Sh. Chet Singh during his lifetime, partitioned the property from Sh. Basant Singh, his cousin. Thus, Sh. Chet Singh became the exclusive owner of the property gifted by his father. Moreover, while filing the written statement in the previous suit, Sh. Chet Singh has specifically asserted that their family is not joint and the plaintiffs have continuously misbehaved with him and they are living separately. Moreover, it was also alleged that the sale consideration received pursuant to two sale deeds have already been distributed by defendant No.1 i.e. Sh. Piara Singh amongst all the plaintiffs. Moreover, the onus to prove that the property is ancestral is on the plaintiffs, who have failed to prove it.

3.10 In **C.N. Arunachala Mudaliar Vs. C.A. Muruganatha Mudaliar and another. AIR 1953 (SC) 495**, the Supreme Court held that when the father obtains the grandfather's property by way of gift, he receives it not because he is a son or he has any legal right to such property, but because his father chose to bestow a favour on him, which he could have bestowed on any other person as well. The interest which he takes in such property solely depends upon the will of the granter. To find out the vested interest in the property it is significant to ascertain the mode of disposition of such property. Relationship of the granter with grantee is not the deciding factor of a person's vested interest in the property.

3.11 Keeping in view of aforesaid discussion, the finding of the First Appellate Court on second issue is also erroneous.

3.12 The First Appellate Court has also erred in observing that both the sale deeds were without consideration. In the sale deed dated 28.03.1984, Ex.D2, the amount of sale consideration i.e. Rs.10,000/- was paid before the Sub-Registrar. Moreover, in the previous suit, Sh. Chet Singh filed the written statement, admitting receipt of the sale consideration.

He also admitted the same fact before the Registrar and acknowledged the receipt of payment. In the sale deed Ex.D-1, it is specifically recorded that he has already received Rs.22,000/-. Sh. Chet Singh while filing the written statement in the previous suit also reiterated the fact. In these circumstances, there was no occasion for the First Appellate Court to hold that the sale consideration has not been paid. Moreover, the sale deed is not required to be set aside for failure to pay consideration unless there is a specific recital to this effect in the sale deed. On a careful reading of the sale deeds, it is crystal clear that the title that passed on to the vendee (appellant Sh.Piara Singh), the moment, the sale deed was executed and registered.

4. Decision:-

4.1 Keeping in view the aforesaid discussion, the result is inevitable. Hence, the appeal is allowed. The judgment of the First Appellate Court is set aside and that of the trial Court is restored.

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

April 18th, 2024
Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No