

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1286 of 1994

Date of Decision: 07.03.2024

Gurpal Singh

... Appellant(s)

Versus

Hari Singh (Since Deceased) through his Legal Representatives and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sunil Chadha, Senior Advocate
with Mr. Tara Dutt, Advocate
for the appellant(s).

Mr. V.K.Jain, Senior Advocate
with Mr. Aman Priye Jain, Advocate
for the respondents.

Anil Kshetarpal, J.

1. Brief Facts and Introduction:

1.1 The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is 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 In this regular second appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by both the Courts below while dismissing his suit for the grant decree of declaration that the suit property is a Joint Hindu Family Coparcenary and Ancestral Property

and he is owner to the extent of 1/7th share. He also assails the correctness of two sale deeds, one executed by his father Bawa Singh on 22.07.1982 and another executed by Ajit Singh on 09.10.1985. Basically the plaintiff relies upon the judgment and decree dated 09.06.1982 passed in Civil Suit No. 188 dated 17.04.1980 (Ex.P10). He claims that in the aforesaid suit, the property was held to be a Joint Hindu Family Coparcenary Property and thus his father, namely Bawa Singh has no right to sell the same.

1.3 The defendants, while contesting the case, stated that the property was the self-acquired property and otherwise also in any case, Bawa Singh had sold the property for legal necessity. They also relied upon the previous judgment (Ex.D5) passed by the Trial Court in between the parties in Civil Civil Suit No. 250 dated 21.07.1982, which, in appeal, was upheld by the Additional District Judge vide judgment and decree dated 07.01.1987 (Ex.D3) wherein, both the Courts below have dismissed the plaintiff's suit.

1.4 Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the scanned requisitioned record of the Trial Court.

2. Arguments addressed by the learned counsel representing the parties

2.1 The learned senior counsel representing the appellant, while referring to the judgment and decree dated 09.06.1982 passed in Civil Suit No. 188 dated 17.04.1980 (Ex.P10), submits that the property was held to be a Joint Hindu Family Coparcenary Property and the subsequent judgment (Ex.D5), which was upheld in appeal vide judgment (Ex.D3), would not

result in setting aside the findings of fact arrived at in the previous suit which have become final between the parties. He further submits that there is another judgment and decree passed between the parties on 22.10.1986 in Civil Suit No. 104 of 1985 (Ex.PA) by the Sub Judge Ist Class, Phillaur. He submits that in this case also, it was held that the property was coparcenary property of the Joint Hindu Family.

2.2 On the other hand, the learned senior counsel representing the respondents (the defendants) submits that the suit was decreed only to the extent of the land measuring 5 kanals and 10 marlas comprised in khasra No. 7/1 and 26. He further submits that the aforesaid suit was dismissed qua all the defendants except Bawa Singh. Hence, he submits that the defendants have no right to file appeal. Consequently, the same would not operate as *res judicata* against the defendants. He further submits that the effect of said judgment was considered in the subsequent judgment passed by the Sub Judge Ist Class, Phillaur (Ex.D5) in Civil Suit No. 250 dated 21.07.1982, decided on 25.04.1984. It was declared that the judgment and decree dated 09.06.1982 (Ex.P10) would not operate as *res judicata*. While drawing the attention of the Court to issue No.7, he submits that the correctness and validity of the sale deed dated 22.07.1982 has already been upheld and it has been declared that the aforesaid sale deed was executed for legal necessity. He further submits that the plaintiff/appellant joined Sohan Singh as an appellant in filing the appeal before the First Appellate Court which was dismissed on 07.01.1987. The First Appellate Court also declared that the judgment and decree dated 09.06.1982 would not operate as *res judicata* against the defendants. He further submits that the plaintiff has not produced

any evidence or excerpt of the revenue record to prove that the property is the Joint Hindu Family Coparcenary Property.

3. Discussion:

3.1 This Court has considered the submissions of the learned counsel representing the parties.

3.2 Firstly, this Court proceeds to examine the judgment and decree dated 09.06.1982 (Ex.P10) passed in Civil Suit No. 188 dated 17.04.1980. This suit was filed by the appellant, namely Gurpal alias Gurpal Singh against Bawa Singh and his sons, namely Gurbux Singh, Lachhman Singh, Mohan Singh, Hari Singh, Sohan Singh and Gurdial Singh, for the grant of decree of permanent injunction restraining defendant No.1 from alienating the suit property by way of gift, Will, exchange, mortgage or otherwise. In the aforesaid suit, the Trial Court identified issue No.1 to the effect as to whether the suit property is Joint Hindu Family Coparcenary Property. While deciding issue No.1, the Trial court held that the parties are governed by Hindu Law and the suit property is Joint Hindu Family Coparcenary Property in between them. However, while deciding the suit, the Trial Court held as under:-

“As an upshot of my findings under the above said issues, to me, the suit of the plaintiff for permanent injunction restraining the defendant No.1, namely, Bawa Singh from alienating by way of gift, sale exchange, mortgage or otherwise, the landed property measuring 5 kanals 10 marlas comprised in khewat No. 803, Rect. No. 104, killa No. 7/1 (-14) and killa No. 26 (1-16) must succeed and his suit in regard to

Regular Second Appeal No. 1286 of 1994

the rest of the suit property which stands already encumbered much before the institution of the instant suit against the defendant must fail. In this view of the matter, the instant suit of the plaintiff is partly decreed and partly dismissed, i.e. the suit for permanent injunction restraining defendant No.1, namely Bawa Singh from alienating by way of gift, sale-exchange, mortgage or otherwise, the landed property measuring 5 kanals 10 marals comprised in Khewat No. 803, Rect. No. 104, killa No. 7/1 (-14) and killa No. 26 (1-16) is hereby decreed while the instant suit for permanent injunction restraining the contesting defendant as such in regard to the rest of the suit property, as mentioned and fully detailed in the head note of plaint is dismissed. I, however, leave both the parties to bear their own costs. Decree-sheet be prepared and file be consigned.”

3.3 Subsequently, Civil Suit No. 250 dated 21.07.1982 was filed by Sohan Singh. In the aforesaid suit, the plaintiff sought decree of declaration. In this suit, the correctness of the sale deed dated 22.07.1982 executed by Bawa Singh was also the subject matter of decision. Issue No.7 reads as under:-

“7. Whether the defendant No.1 sold the land measuring as 25 knls 16 mls vide registered sale deeds dated 22.7.82 for legal necessity and consideration of Rs.24500/-? OPD”

In the aforesaid suit, issue No.7 was decided in favour of the

defendants and it was held that the sale deed executed by Bawa Singh was for legal necessity and therefore, the same is valid. The Trial Court also discussed the effect of the judgment dated 09.06.1982 (Ex.P10) and it was held that the same was dismissed qua the rights of the defendants and therefore, it would not operate *res judicata* against their rights. Gurpal Singh along with Sohan Singh filed the first appeal against the judgment dated 25.04.1987. The appeal was decided by the Additional District Judge on 07.01.1987 and a copy thereof is exhibited as Ex.D3. In the aforesaid judgment, once again the First Appellate Court held that the judgment (Ex.P10) shall not be binding on the rights of the defendants as the suit against them was dismissed. Ultimately, the appeal filed by Gurpal Singh and Sohan Singh was dismissed by the Additional District Judge and the findings of fact were arrived at by the Trial Court to the effect that the sale deed dated 22.07.1982 is valid and for legal necessity.

3.5 The next judgment is Ex.PA dated 22.10.1986 passed in Civil Suit No. 104 of 1985. This suit was filed by Hari Singh, Gurbux Singh and Lachhman Singh, sons of Bawa Singh. This was only a suit for the grant of decree of declaration that mutation No. 9504 in favour defendant No.1 is wrong. This suit was only concerning the land comprised in rectangle No. 104 and killa No. 7/1 and 26 measuring 5 kanals and 10 marlas. In the aforesaid suit, issue No.5 reads as under:-

“5. *Whether the suit property was the coparcenary property of the joint Hindu Family of which Bawa Singh deceased was the karta, if so, its effect? OPD-1*”

While deciding issue No.5, the Trial Court held that Bawa

Regular Second Appeal No. 1286 of 1994

Singh is Karta of the family and the property is Joint Hindu Family Coparcenary. Ultimately, mutation No. 9504 was set aside on this basis.

3.7 Thus, it is evident that the judgment (Ex.P10) dated 09.06.1982 was never passed against the defendants. Hence, they had no right to file appeal. Any finding arrived at by the Trial Court in an injunction suit against which the respondents have no right to file an appeal would not operate as *res judicata*. Moreover, in the judgment (Ex.D5), which has been affirmed vide judgment (Ex.D3), it has been held that the sale deed dated 22.07.1982 is for legal necessity and valid. This judgment is in between the parties. The plaintiff was party before the Trial Court and co-appellant in the first appeal. Thus, the aforesaid judgment is binding on the plaintiff and operates as *res judicata*.

3.8 Additionally, the plaintiff has not led any evidence to prove that the property still continues to be 'coparcenary'. Except the various judgments relied upon, the plaintiff has not led any evidence to prove that fact. In any case, once the property has been sold for legal necessity as concluded vide judgment (Ex.D5), which, in appeal, was affirmed by the First Appellate Court, there is hardly any scope left for interference.

3.9 The learned senior counsel representing the appellant insists that this Court should refer to the judgments passed by the Supreme Court in ***S.Ramachandra Rao v. S. Nagabhushana Rao and Others 2022 AIR (Supreme Court) 5317*** and ***Shri Jai Kishan Dass and Others v. Smt. Nirmala Devi and Other 1984 AIR (Supreme Court) 589*** to contend that both the Courts below have erred in observing that the subsequent judgment

in between the parties is to be relied upon. He submits that the Supreme

Court has held that the doctrine of *res judicata* is applicable even with respect to the previous judgments/orders.

4. Decision:

4.1 As already noticed, this Court has not upheld the judgment of the First Appellate Court on this aspect of the matter. The judgment of both the Courts below have been upheld for entirely different reasons. Hence, the elaborate discussion on the aforesaid judgments relied upon by the learned senior counsel representing the appellant is not considered appropriate.

4.2 Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

March 07, 2024

“DK”

(Anil Kshetarpal)
Judge

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No