

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA-220-1991 (O&M)

Reserved on: 05.04.2024

Date of decision: 25.04.2024

Bharpai (deceased) through her LRs

..Appellant

Versus

Smt. Panmeshwari (deceased) through her LRs and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:-     Mr. M.S.Rana, Advocate for

Mr. Ashish Kapoor, Advocate for the appellant

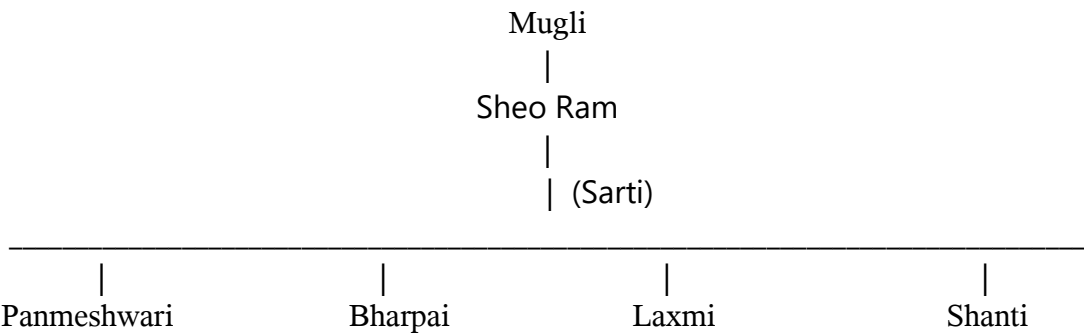
Mr. Ankur Lal, Advocate for respondent no.1

Mr. Rakesh Nehra, Sr. Advocate with

Mr. Vikalp Hooda, Advocate for respondent no.3

ANIL KSHETARPAL, J

1.             This is defendant’s second appeal against the judgment of the First Appellate Court, which in turn has reversed the judgment passed by the trial court.
2.             “Whether it is permissible for the court to make out a new case for the parties, which is also contrary to their pleaded case?”
3.             In order to comprehend the issue involved in the present case, some relevant facts, in brief, alongwith a pedigree table are required to be noticed.



4. On 28.09.1984 Smt. Panmeshwari Devi filed a suit for declaration or in the alternative for relief of possession. It is her case that Smt. Sarti, (plaintiff’s mother) was owner in possession of the land measuring 23 bighas 15 biswas 6 biswasis situated in the revenue estate of Dadri and in lieu of the above land, 113 kanal 18 marlas land was allotted under the consolidation of holdings. Smt. Sarti died 11 years ago from the date of filing of the suit whereas Sheo Ram died in February, 1947. At that time, the plaintiff was 3 years old and Smt.Sarti was about 42 years old. After the death of Sheo Ram, the entire responsibility to handle the affairs of the family fell on the shoulders of Smt. Sarti. However, due to death of her husband and son, she lost her mental and physical balance. Defendants no.1 and 2 namely Smt.Bharpai and Laxmi were married about 33 years ago and they alongwith their respective husbands started living with Smt. Sarti, who came under their influence. Subsequently, defendants no.1 and 2 procured a gift with respect to the suit land from Smt. Sarti, which is a mere paper transaction as the gift is based upon fraud and misrepresentation and Smt. Sarti was not of sound mind. She also asserted that in May, 1984 she wanted to cultivate the land but was not permitted as the defendants claimed that they are the owners. The

plaintiff requested, however, defendants did not agree and final refusal was 2 days before the filing of the suit. Defendant no.1 contested the suit on the ground that Smt. Sarti was owner of the property and she gifted the property to the defendants no.1 and 2. It was also claimed that the suit was filed beyond the period of limitation.

5. Out of the pleadings of the parties, the following issues were settled:-

*“1. Whether plaintiff and proforma defendants are the daughters of Sarti widow of Sheo Ram? OPP.*

*2. Whether the gift-deed no.165 executed on 12.3.55 and registered on 19.3.55 is illegal and result of fraud and mis-representation as alleged in the plaint and the plaintiff is not bound by the same? OPP.*

*3. Whether mutation no.1612 is also liable to be set aside, as alleged in the plaint? OPP.*

*4. Whether the suit is within limitation? OPP.*

*5. Whether the gift was validly executed in favoured of the contesting defendants for the services rendered by them, as alleged in the written statement? OPD*

*6. Whether the plaintiff has no locus standi to file the present suit? OPD.*

*7. Whether the suit is not maintainable in the present form? OPD*

*8. Whether the plaintiff has waivadher right and is estopped from filing the present suit? OPD.*

*9. Whether the suit is vague and incomplete, if so, to what effect? OPD.*

*10. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.*

*11. Whether the suit false and frivolous and the defendants are entitled to special costs? OPD.*

*12. Whether the suit is the result of collusion between the plaintiff and defendant no.2 ?OPD.”*

6. The plaintiff herself appeared as PW1. She disclosed her age as 43 years. She stated that she came to know of the gift deed 2 ½ years back. PW2 Laxami Narayan, PW3 Partap and PW4 Ram Sarup were examined. Defendant no.1 Smt. Bharpai herself appeared as DW1.

DW2 Sugandh Singh son of scribe of the gift deed appeared as DW2 whereas DW3 and DW4, the two attesting witnesses of the gift deed were examined. Sh.Sugandh Singh had identified the signatures of Sh.Laxman on the gift deed as he was working in the same court complex where Sh.Laxman used to practice. The trial court dismissed the plaintiff's suit, however, the First Appellate Court has set aside the same.

7. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook, alongwith the scanned copy of the lower court's record.

8. Learned counsel representing the parties have also filed their respective synopsis alongwith gist of their arguments. The written note of submissions of the learned counsel representing the appellants is extracted as under:-

*“Suit filed on 28-09-1984 after about 30 yrs of the gift deed dated 12.03.1955 (Ex.D1) which had hopelessly time barred. The limitation challenge of gift deed is 3 yrs.*

*Even, if it taken as suit for possession by way of title, the limitation is 12 yrs. The gift deed is dated 12.03.1955 limitation expired in 1967.*

*The gift deed is a registered document and the mutation also sanctioned in the same year and even, the plaintiff-respondent and proforma defendant were living with the appellants till their marriage, the presumption is that they had knowledge of the alleged gift deed. (Page 19 of Trial Court Judgment)*

*The Ld. LAC has acceded it jurisdiction in making out a new case for the plaintiff-respondent by holding that Smt.Sarti had became owner under the provisions of the Hindu Succession act, even, otherwise, prior to the enforcement of the said act, smt. Sarti had lost possession in 1955 itself, so, there was no question of her becoming the owner under the*

*said act. Even, the gift deed was challenged only on the ground of fraud was and misrepresentation and the ld. LAC has gone beyond pleadings of the parties and made a new case for the plaintiff which is not permissible in law. (Para 8 & 12 of Appellate Court Judgment)”*

9. Whereas the written note of the learned senior counsel representing the respondent reads as under:-

*“• Smt. Sarti was only limited owner of the property in question, after death of her husband, up to her life. Smt. Sarti being limited owner had got limited powers for the disposal of immovable property and it has been clearly laid down that limited powers of disposal of immovable property-to uphold an alienation, by a widow or other limited hires of the corpus of immoveable property inherited by her.*

*• It is apt to mention here that there is no evidence on the file that Smt. Sarti had got a legal necessity or any other necessity ever established to make a gift and debarred her remaining two daughters by making gift deed and her own daughters to whom she was to bring up and solemnise their marriages.*

*The consent of the next reversioners i.e. the respondents her own daughters and the brother's of her husband were also not taken before making the gift deed in favour of (2 daughters) Appellant, none of the requirements were fulfilled.*

*• Smt. Sarti died at the age of 52 years after coming into force of the Hindu Succession Act and by that time right to inheritance had been given to the daughters and it is the case of respondent herein that a few days prior to filing of this suit, she came to know that appellant have got executed a gift deed in their favour from their mother regarding whole of the landed property left by their father by playing fraud, exercising undue influence as well as misrepresenting the facts, so the period of limitation in this case was started from the day of the knowledge. (Para 11 at page 40)”*

10. The First Appellate Court has held that Smt. Sarti was a limited owner in view of para 178 of Mulla's Hindu Law. It has been held that alienation of the property is an infringement of para 181 of the Mulla's Hindu Law and therefore, ineffective.

11. On a careful reading of the plaint, it is evident that in para 2, the plaintiff herself asserts that Smt. Sarti was owner of the property. It was not the case of the plaintiff that Smt. Sarti was only a limited owner. In the entire plaint, the plaintiff does not assert that Smt. Sarti was a limited owner. While appearing as PW1, the plaintiff did not state that Smt. Sarti was limited owner. Thus, the First Appellate Court has erred in making out a new case, which is neither pleaded by the plaintiff nor any evidence has been led.

12. Additionally, it may be noted here that the First Appellate Court has erred in relying upon para 178 of the Mulla's Hindu Law. In fact, the First Appellate Court has recorded the finding without any material. It is not clear as to whether Smt. Sarti inherited the property under the customary law or under the old Hindu Law. It is not the case of the plaintiff that succession was governed by the provisions of the Hindu Women's Right to Property Act, 1937. Sh. Sheo Ram died in the year 1947. It is not even the case of the plaintiff that the parties were governed by Mitakshara Law. Under the old Hindu Law, a widow has a right to inherit the property from her husband. In all circumstances, the widow was not a limited owner. Under Bengal School, females could inherit the property. Similarly, it is also not clear that Sh. Sheo Ram left behind a male heir or not. It has come in evidence that Sh. Sheo Ram

and Smt. Sarti were blessed with a son, who died. There is no material to prove that the male child died before or after the death of Sh.Sheo Ram.

13. As far as the first submission of the learned counsel representing the respondent is concerned, it may be noted that the submission sought to be made is against para 2 of the plaint. From the reading of the issues, it is evident that there is no issue that Smt. Sarti had only limited estate.

14. The second argument of the learned counsel representing the respondent would come into play only if it is proved that Smt. Sarti was limited owner. Para 178 and 181 of the Mulla's Hindu Law operate only if Smt Sarti was limited owner and governed by Hindu Law and not by custom.

15. The next argument of the learned counsel is also based on presumption that Smt. Sarti was only a limited owner which is not the plaintiff's case. Similarly, argument no.4 has no substance because that may apply only if it is the case of the plaintiff that Smt. Sarti has life estate or is a limited owner.

16. The First Appellate Court has also erred in overlooking the fact that the suit filed by the plaintiff was filed beyond the prescribed time. In fact, it was hopelessly barred by time. While appearing in evidence, she has disclosed her age as 43 years although the date on which her deposition was recorded is not clear, however, it is evident that the suit was filed in the year 1984 whereas it was decided on 06.10.1989. A suit for declaration challenging an instrument transferring

the property was required to be filed within a period of 3 years. The gift deed dated 12.03.1955 is a registered instrument. As per Section 3 of the Transfer of Property Act, 1882, a person is said to have knowledge of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it. As per explanation 1, transaction related to immovable property is required to be effected by a registered instrument. In case of registered instrument, the person shall be deemed to have notice of such instrument from the date of registration of such instrument. The plaintiff has failed to rebut the aforesaid presumption. In these circumstances, the suit filed by the plaintiff, after a period of nearly 29 years from the date of gift deed, is beyond the prescribed time.

17. Keeping in view the aforesaid discussion, the judgment passed by the First Appellate Court is set aside and that of the trial court is restored. Appeal stands allowed.

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

25.04.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE