

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 71 of 1991

Reserved On: 05.02.2024
Pronounced On: 14.03.2024

Ajmer Singh and Others
... Appellant(s)

Versus

Jarnail Singh and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Madhu Dayal, Advocate
for the appellant(s).

Mr. Amrindra Pratap Singh, Advocate
for the respondents.

Anil Kshetarpal, J.

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*.
2. In this regular second appeal, the plaintiff through his legal representatives assails the correctness of the concurrent judgments and decrees passed by the Trial Court as well as the First Appellate Court while dismissing his suit for possession of land described in the caption of the suit.

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case, the relevant facts, in brief, along with the pedigree table is required to be narrated. Late Sh. Wazira was the owner of the property. When he died, he left behind his widow Smt. Bassi alias Basso, Smt.Attri and Smt.Sobhi, daughters. Subsequently, Sahib Ditta married to Smt.Tulsan. On the death of Sh.Wazira, the entire property was entered in the revenue record in favour of Sahib Ditta. On the death of Sahib Ditta, the property was entered in the name of Smt.Tulsan. Late Smt.Attri, mother of the plaintiff, filed a Civil Suit No. 38 of 1943 against Smt.Tulsan for possession of the suit land in which a compromise was arrived at, resulting in decree for possession of the whole land was passed in favour of Smt.Attri. It was provided that the possession of half of the land shall be transferred to Smt.Attri forthwith, whereas Smt.Tulsan would retain possession of half share till her death and thereafter, it would revert back to Smt. Attri. The compromise decree was passed on 11.10.1943, which reads as under:-

"As per compromise, a decree for possession is passed in favour of plaintiff and against defendants to the effect that the Plaintiff is entitled to possession of ½ share of suit property forthwith. The Plaintiff shall be entitled to possession of the remaining ½ share of the property after the death of Smt. Tulsan. Defendant No.1 Smt. Tulsan shall not be entitled to alienate the property in her possession in any manner. Plaintiff and defendant shall be entitled to get partition. Defendants No.2 to 4 have been proceeded against ex- parte. The mortgage effected by Sahib Ditta in favour of Defendants No.2 to 4 are declared void. Plaintiff shall be entitled to possession without payment of any

mortgage money, because Smt. Basso had no right to gift the land or to adopt a son and the mother of Sahib Ditta had died during the life time of Smt. Basso. For the reason in the presence of the plaintiff, Sahib Ditta was not the heir to the property of Smt. Basso. After the death of Smt. Basso, the plaintiff became the exclusive owner of the suit property.”

4. After the death of Smt. Attri, Smt.Tulsan mortgaged some part of land in favour of Sh.Wariayama and others. Plaintiff-Harnama son of Smt.Attri filed a Civil Suit No. 179 of 1954 against Smt.Tulsan and the mortgagees which was decreed and alienations made by Smt.Tulsan were held to be null and void. Smt.Tulsan died on 19.10.1952. The half share of the land was mutated in favour of Smt. Shankari who was the widow of Sh. Wariayam son of Sh.Sahib Ditta resulting in filing of this suit.

5. The defendant No.1 and 2, while contesting the suit , pleaded that Sahib Ditta was adopted by late Smt. Basso in the year 1905 which was challenged by the reversioners of the husband of Smt. Basso but failed. The decree passed on the basis of compromise was illegal, null and void and not binding on the defendants. Smt.Tulsan became full owner of the property. In any case, the alleged compromise was washed away by the Civil Court’s judgment in 1971.

6. Both the Courts below held that under Section 14(1) of the Hindu Succession Act, 1956 (hereinafter referred to as “the 1956 Act”), Smt.Tulsan became full owner of the half share of the property, resulting in dismissal of the suit.

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with their able assistance, perused the paper-book along with the requisitioned record.

8. The learned counsel representing the appellants has also filed her written submissions, whereas, the learned counsel representing the respondents has handed over a compilation of the judgments.

9. This Court has analyzed, evaluated and considered the submissions of the learned counsel representing the parties. In the opinion of the Court, the following issue requires adjudication”

“If in a decree passed in the previous suit upon a compromise between the parties, a female only gets right to enjoy possession during her life time which is not referable to the pre-existing rights before coming into force of the Hindu Succession Act, 1956, whether under Section 14(1) her limited estate would enlarge into the complete ownership?”

10. The decision of this case depends upon Section 14 of the 1956 Act which reads as under:-

“14. Property of a female Hindu to be her absolute property.—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any

person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

11. On the careful reading of sub-Section (1) to Section 14 of the 1956 Act, it is evident that if a female Hindu acquires movable or immovable property by inheritance, or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act shall be held by her as full owner thereof and not as a limited owner. However, sub-Section (2) to Section 14 of the 1956 Act is in the nature of exception. It provides that sub-Section (1) shall not apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property, then her right will not

enlarge into full ownership.

12. This provision has been the subject matter of interpretation by the Courts from time to time. A three Judges Bench in *Mst. Karmi v. Amru and Others (1972) 4 SCC 86* held that Nihali became owner by virtue of Will executed by her husband Jaimal Singh who died in the year 1938. She would not become full owner of the property. The aforesaid line of reasoning has been consistently followed in *Sadhu Singh v. Gurdwara Sahib Narike (2006) 8 SCC 75*, *Shiv Dev Kaur (Deceased) by LRs and Others v. R.S.Grewal (2013) 4 SCC 636* and *Ranveer Dewan v. Rashmi Khanna and Another (2018) 12 SCC 1*. There is another line of judgments taking a different view with lead case in *Vaddeboyina Tulasamma and Others v. Vaddeboyina Sesha Reddi (Dead) by L.Rs (1977) 3 SCC 99*.

13. The learned counsel representing the respondents has drawn the attention of the Court to a recent judgment passed by the Supreme Court in *Munni Devi alias Nathi Devi (Dead) Thr. LRs and Others v. Rajendra alias Lallu Lal (Dead) Thr. LRs. and Others (Civil Appeal No. 5894 of 2019, decided on 18.05.2022)*. He has also relied upon the judgment passed by the Supreme Court in *Sellammal and Others v. Neelammal (Dead) by LRs (1977) 3 SCC 145*.

14. This Court has carefully read the various judgments relied upon by the learned counsel representing the parties.

15. On the careful reading of the compromise decree, it is evident that the right of Smt. Attri to the property left behind by Smt. Basso was admitted by Smt. Tulsan. The possession of half share of the suit property

was handed over to Smt. Attri, forthwith. It was only the possession of

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remaining half share of the property which was required to be transferred to Smt. Attri after the death of Smt. Tulsan. It was specifically provided that Smt. Tulsan was not entitled to alienate the property in her possession in any manner. It was also acknowledged that Smt. Basso had no right to gift the land or adopt a son as the mother of Sahib Ditta had died during the lifetime of Smt. Basso.

16. Keeping in view the aforesaid decree which has become final between the parties, Smt. Tulsan was left with only possessory right during her life time. This fact was further reiterated in the judgment and decree passed in Civil Suit No. 5179 of 1954. The mortgage of some property by Smt. Tulsan was declared illegal by the Court vide judgment and decree passed by the Court of competent jurisdiction on 09.12.1954. The operative part of the decree reads as under:-

“Claim for declaration to the effect that the decrea in case No.130 of 1954 decided on 13.5.54 by Sub Judge, Rupar. Baryan Singh versus Tulsan vide com- promise regarding lund measuring 10 bighas 2 biswas khewat and khatauni No.25/2, khusra No. 1 to 4 etc. 47/16 situated in Mullanpur Sindian, Tehsil Rupar obtained by Baryam Singh against Tulsan, was collusive and that the mortgage effected there by being without consideration, legal necessity and authority is illegal and void and would not be binding on the reversionary rights of the plaintiff and defendant no.3 after the death of defendant no.2.

Plaint presented on the 7th June, 1954.

(Value for purposes of jurisdiction 1136/6/6 and court fee fixed

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15/-.

This suit coming on this day for final disposal before Shri Tilak Raj Handa, Bub Judge Ist Class, Bugun in the presence of B. Hari Ram Pleader for the plaintiff and Sh. Sunder Lal, Pleader for the defendants decree for declaration to the effect that the decree challenged in the plaint was collusive and that the mortgage effected thereby was illegal, void and without authority and that it shall not be binding on the plain- till and defendant No.3, after the death of defendant No.2. And it is further ordered that the defendants no.1 and 2 also pay Rs.51/8, the costs of this suit to the plaintiff.”

17. It is also evident that the rights of Smt.Tulsan are not referable to any pre-existing rights. In para 61 (4) of the judgment passed in ***Vaddeboyina Tulasamma’s case (supra)***, it was declared that if the decree merely seeks to confirm, endorse, declare or recognize the pre-existing rights, then Section 14(1) of the 1956 Act shall operate. However, where a property is allotted or transferred to a female Hindu without reference to any pre-existing right then Section 14(2) of the 1956 Act which uses the word ‘restricted estate’ in a wider manner shall operate. The conclusion No. 70(7) in ***Vaddeboyina Tulasamma’s case (supra)*** reads as under:-

“(7) That the words “restricted estate” used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee.”

As already observed that the rights of Smt.Tulsan are not

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claimed to be based on any pre-existing right, the parties entered into settlement resulting in decree which has become final between the parties.

19. Keeping in view the aforesaid facts and discussion, both the Courts below have erred in applying Section 14(1) instead of Section 14(2) of the 1956 Act. Consequently, the appeal is allowed and the judgments and decrees passed by both the Courts below shall stand set aside, resulting in a decree in favour of the plaintiff that he is entitled to possession of the suit property except the land comprised in khasra No. 12//21/4(1-13) and 12//21/3(0-3) which could not be connected with the land originally connected by late Sh.Wazira.

(Anil Kshetarpal)
Judge

March 14, 2024
“DK”

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