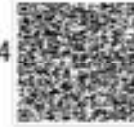


2024:PHHC:087364



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-1718-2024(O&M)
Reserved on : 10.07.2024
Pronounced on: 15.07.2024
2024:PHHC:

MANMOHAN MEHTA AND OTHERS

.... APPELLANTS

Vs.

GENERAL PUBLIC

.... RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued By:- Mr. Harbhajan Singh Bajwa, Advocate, for the appellants.

DEEPAK GUPTA, J.

Suit for declaration filed by the plaintiffs (*appellants herein*) was dismissed by the trial Court on 03.07.2023 and the said judgment has been affirmed by the First Appellate Court of Ld. District Judge, Chandigarh on 18.12.2023. Against this concurrent finding, the plaintiffs of the suit have approached this Court by way of present Regular Second Appeal.

2.1 Perusal of the paper-book would reveal that Smt. Kamlesh Mehta wife of Manmohan Mehta was the owner of House No.3041, Sector 37D, Chandigarh, by virtue of a sale deed dated 10.03.2004. She died intestate on 13.12.2019, leaving behind her husband Manmohan Mehta, two sons

namely Rishi Mehta & Akshay Mehta; and one daughter namely, Ritu Mehta (plaintiffs – *appellants herein*). All these four legal heirs of Smt. Kamlesh Mehta filed the suit for declaration, claiming that after the death of Smt. Kamlesh Mehta, the suit property had devolved upon them as per Section 15 of the Hindu Succession Act, 1956, as there was no other legal heir except them. They prayed for a decree of declaration to that effect. The suit was filed against the General Public. Despite publication in newspaper having circulation in the area, nobody put in appearance to file any objection and so, the defendant-General Public (*respondent herein*) was proceeded against *ex parte*.

2.2 *Ex parte* evidence was produced by the plaintiffs, which apart from the oral evidence also included death certificate of Smt. Kamlesh Mehta as Ex.PW1/2 and copy of sale deed Mark A. After taking this *ex parte* evidence, the suit has been dismissed by the trial Court on 3.7.2023 solely on the ground that a mere decree for declaration cannot be granted under Section 34 of the Specific Relief Act, 1963. The said finding of the *ld.* trial Court has been affirmed by the appellate Court in its judgment dated 18.12.2023.

3. The short submission made by *ld.* counsel for the appellants before this Court is that appellants were seeking a decree of declaration regarding their entitlement to the legal character to the effect that they are the legal heirs of deceased Kamlesh Mehta and also their legal right that they have inherited the suit property left behind by Kamlesh Mehta and therefore,

even the suit for declaration was maintainable. Ld. counsel has referred to a decision of Hon'ble Supreme Court rendered in *Vemareddi Ramaraghava Reddy and others Vs. Konduru Seshu Reddy and others*, 1967 AIR (Supreme Court) 436; and a Division Bench judgment of Madhya Pradesh High Court rendered in *Ramnarayan and others Vs. Firm Mangeram Radheshyam Hardoi (UP) and another*, 1979 HLR 766.

4. As respondent-defendant is *ex parte* before both the Courts below, therefore, notice of the appeal to the respondent is hereby dispensed with.

5. Having considered contentions of Ld. Counsel for the appellants, I find merit in the same.

6. The only issue to be determined by this Court is as to whether in the facts and circumstances of the present case, a mere decree for declaration could be granted or not. Section 34 of the Specific Relief Act, 1963 is relevant, which reads as under:-

“34. Discretion of court as to declaration of status or right.

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.--A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.”

7. Prior to coming into force of the Specific Relief Act, 1963, similar provision i.e., Section 42 existed in Specific Relief Act, 1877. Interpretation of that provision was subject matter of consideration before Hon'ble Supreme Court in the case of *Vemareddi Ramaraghava Reddy and others (Supra)*. After referring to Section 42 of the Specific Relief Act, 1877, which is similar to Section 34 of the Specific Relief Act, 1963, as stated earlier, it was observed by Hon'ble Supreme Court as under: -

“6. The legal development of the declaratory action is important. Formerly it was the practice in the Court of Chancery not to make declaratory orders unaccompanied by any other relief. But in exceptional cases the Court of Chancery allowed the subject to sue the Crown through the Attorney-General and gave declaratory judgments in favour of the subject even in cases where it could not give full effect to its declaration. In 1852 the Court of Chancery Procedure Act was enacted and it was provided by Section 50 of that Act that no suit should be open to objection on the ground that a merely declaratory decree or order was sought thereby, and it would be lawful for the court to make binding declarations of right without granting consequential relief. By Section 19 of Act VI of 1854, Section 50 of the Chancery Procedure Act was transplanted to India and made applicable to the Supreme Courts. With regard to courts other than the courts established by Charters, the procedure was codified in India for the first time by the Civil Procedure Code, 1859, where the form of remedy under Section 19 of Act VI of 1854 was incorporated as Section 15 of that Act which stood as follows:

"No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the civil Courts to make binding declarations of right without granting consequential relief."

In 1862, the provisions of the Civil Procedure Code of 1859 were extended to the courts established by Charters, when the Supreme Courts were abolished and the present High Courts were established. In 1877 the Civil Procedure Code, 1859 was repealed and the Civil Procedure Code of 1877 was enacted. The provision regarding declaratory relief was transferred to Section 42 of the Specific Relief

Act, which was passed in the same year. This section which is said to be a reproduction of the Scottish action of declaratory, has altered and to some extent widened the provisions of Section 15 of the old Code of 1859.”

8. After referring to the subsequent development of law, Hon’ble Supreme Court held as under: -

“11. In our opinion, Section 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree independently of the requirements of the section.”

9. In ***Ramnarayan and others Vs. Firm Mangeram Radheshyam Hardoi (UP) and another***, the issue before the Division Bench of Madhya Pradesh High Court, was – ‘*Whether suit for bare declaration without claiming the relief of injunction is not maintainable?*’ The Madhya Pradesh High Court after referring to Section 34 of the Specific Relief Act, 1963, reproduced earlier, held as under: -

“7. Decrees merely declaratory are an innovation and they first obtained an authoritative sanction in England by Section 50 of the Chancery Procedure Act, 1852. In India, this type of relief got a statutory recognition with the enactment of Section 15 of the Code of Civil Procedure, 1859, and was practically in the same terms as Section 50 of the Chancery Procedure Act. This Code of 1859 was repealed by the Code of 1877. In the same year was enacted the Specific Relief Act. The provision as to declaratory decrees was omitted from the Civil P. C. and incorporated in the Specific Relief Act as Section 42. This section of the Specific Relief Act, 1877 (old Act), has been replaced by Section 34 of the Specific Relief Act, 1963 (present Act), and is in the following terms:

"34. Any person entitled to any legal character or to any right as to any property, may institute a suit against any person denying or interested to deny his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not

in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation. -- A trustee of property is a 'person interested to deny' a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee."

8. It will thus be seen that Section 34 of the Specific Relief Act, 1963 (old Section 42) merely gives a statutory recognition to certain well-recognised types of declaratory reliefs and further enacts a limitation on the grant of such relief in the shape of the proviso. Analysing the scope of this section, Dixit, J. (as he then was) in **Madanlal v. State of Madhya Bharat, AIR 1955 Madh B 111** pointed out that in order to be able to seek a relief of declaration in terms of Section 42 (of old Act), the plaintiff must show that he has some legal character or some right to property and that his opponent is denying or interested to deny such legal character or right. Legal character is the same thing as Legal status, i.e., a position recognised by law. Like view has been expressed by the Allahabad High Court in **Mahabir Jute Mills v. Firm Kedar Nath, AIR 1960 All 254**.

9. The aforesaid two decisions, however, do not say that grant of declaratory decree independent of Section 42 (old Act) or Section 34 (present Act) is prohibited. All that these decisions say is that the section permits grant of declaration as to legal character or right to property only when the same is being denied by the opponent or when the opponent is interested to deny it. In **Vemareddi Ramagharava v. Konduru Seshu, AIR 1967 SC 436**, their Lordships of the Supreme Court, in para 11 at page 440 of their judgment have laid down the law as under:

"In our opinion, Section 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the Courts have power to grant such a decree independently of the requirements of the section. It follows, therefore, in the present case that the suit of the plaintiff for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of Section 42 of the Specific Relief Act."

Similar view has again been reiterated by the Supreme Court in **Supreme General Films Exchange Ltd. v. Brijnath Singhji, AIR 1975 SC 1810**. It has been observed in that case that Section 42 cannot be deemed to be exhaustive of every

kind of declaratory relief or to circumscribe the jurisdiction of Courts to give declarations of right in appropriate cases falling outside Section 42. These authorities now well settle the law that Section 34 does not exhaust the field of declaratory decrees and the Courts do have jurisdiction to grant declarations apart from the terms of that section.

10. Question then is whether the Court's jurisdiction to grant declaratory decrees is unfettered. The law has been stated succinctly in para 511, pp. 212-215 of Halsbury's Laws of England (Hail-sham Edition), Vol. 19, in these terms:

"Judgments and orders are usually determinations of rights in the actual circumstances of which the Court has cognisance, and give some particular relief capable of being enforced. It is, however, sometimes convenient to obtain a judicial decision upon a state of facts which has not yet arisen, or a declaration of the rights of a party without any reference to their enforcement. Such merely declaratory judgments may now be given, and the Court is authorised to make binding declarations of right whether any consequential relief is or could be claimed or not. There is a general power to make a declaration whether there be a cause of action or not, and at the instance of any party who is interested in the subject-matter of the declaration, and although a claim to consequential relief has not been made, or has been abandoned or refused, but it is essential that some relief should be sought or that a right to some substantive relief should be established".
(The underlined is ours).

It can at once be seen that a declaration falling outside Section 34 of the Specific Relief Act will be governed by the general provisions of the Civil P. C. like Section 9 or Order 7, Rule 7. In the decision in **Supreme General Film Exchange Ltd. v. Brijnath Singhji**, AIR 1975 SC 1810, it is ruled that the circumstances in which a declaratory decree under Section 42 should be awarded is a matter of discretion depending upon the facts of each case. Thus where the act complained of deprives the plaintiff of certain present rights to property and the declaratory decree has the effect of giving present relief as well, the Courts shall have power to make such a declaration. In **Sheo Singh Rai v. Mst. Dakho**, (1877-78) 5 Ind App 87 (PC), the law is very precisely stated in the following terms:

".....a declaratory decree ought not to be made unless there is a right to some consequential relief which, if asked for, might have been given by the Court or unless in certain cases a declaration of right is required as a

step to relief in some other Court."

11. The conclusion we have thus reached may be summarised thus: Thus Court's power to grant declaratory decrees is not limited to the terms of Section 34 (present) or Section 42 (old) of the Specific Relief Act. Declaratory decrees can well be made by the Courts under the general provisions of the Civil P. C. as Section 9 or Order 7 Rule 7, of the Code. The exercise of jurisdiction to grant such declaratory reliefs beyond the terms of that section shall depend upon the facts of each case. Such a declaration may be granted when it is essential as a step to a relief in some other case or when a declaration in itself is a substantial relief and has immediate coercive effect."

[under-lined portion emphasised by this court]

10. It is, thus, clear from the legal position as above that Section 34 of the Specific Relief Act, 1963 is not exhaustive of the cases, in which declaratory decree may be passed. Declaratory decree can well be passed by the Courts under the General Provisions of Code of Civil Procedure such as Section 9 or Order 7 Rule 7 of the CPC, though of course exercise of jurisdiction to grant such declaratory reliefs beyond such section shall depend upon the facts of each case. Such a declaration may be granted when the same in itself is a substantial relief and has immediate coercive effect. Only the fact that no relief other than declaration is claimed, can not be the reason to decline the decree of declaration. The declaratory decree does not confer any new right but only clears the mist, which might have gathered around the title to the property or the status/legal character of the plaintiffs regarding entitlement to the property.

11. In the present case, it is not in dispute that Smt. Kamlesh Mehta was the owner of property in dispute; that she had died intestate and

that plaintiffs-appellants are her only legal heirs and so, entitled to inherit the suit property in equal share. This Court does not find any reason to decline the decree of declaration regarding the said legal character and entitlement of the suit property in favour of the plaintiffs to that effect.

12. As such, the judgments and decrees as passed by the Courts below are hereby set aside. Present appeal is hereby allowed. A decree of declaration is hereby passed to the effect that plaintiffs-appellants are the Class-I legal heirs of deceased Smt. Kamlesh Mehta. As a consequential relief, it is further declared that they are entitled to inherit the suit property in equal shares. No order as to costs. Decree sheet be prepared accordingly.

15.07.2024
Vivek/sarita

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>