

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3665 of 2009 (O&M) and
Cross Objection No.1-C-2013 (O&M)
Date of Order:02.05.2024

Parvinder Singh (since deceased) through LRs and others

Versus

Rajpal and others

.Appellants

..Respondents

RSA No.3667 of 2009 (O&M) and
Cross Objection No.3-C-2013(O&M)

Parvinder Singh (since deceased) through LRsand others

Versus

Ram Kala (since deceased) through LRs and others

.Appellants

..Respondents

RSA No.3669 of 2009 (O&M) and
Cross Objection No.2-C-2013(O&M)

Parvinder Singh (since deceased) through LRsand others

Versus

Ram Kala (since deceased) through LRs and others

.Appellants

..Respondents

RSA No.4434 of 2009 (O&M)and
Cross Objection No.4-C-2013(O&M)

Raj Pal

Versus

Ram Kala (since deceased) through LRs and others

.Appellant

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Saurabh Bajaj, Advocate
for the appellants(in RSA-3665, 3667 and 3669-2009)

Mr. A.K.Khubbar, Advocate
for the appellants (in RSA-4434 of 2009)

Mr. V.K.Jindal, Sr. Advocate, with
Mr. Akshay Jindal, Advocate
Mr. Pankaj Gautam, Advocate
for cross-objector/respondent no.2-Ram Kala
Mr. Bhag Singh, Advocate
for the LR's of respondent no.2(except Savitri Devi)

ANIL KSHETARPAL, J

C.M.No.561-C-2013 in Cross Obj.1-C-2013 in RSA-3665-2009
C.M.No.567-C-2013 in Cross Obj.3-C-2013 in RSA-3667-2009
C.M.No.564-C-2013 in Cross Obj.2-C-2013 in RSA-3669-2009
C.M.No.570-C-2013 in Cross Obj.4-C-2013 in RSA-4434-2009

1. For the reasons mentioned in these applications, which are supported by the affidavits, the delay of 97 days in re-filing the cross-objections in the appeal is condoned.

2. CMs stand disposed of.

C.M.No.563-C-2013 in Cross Obj.1-C-2013 in RSA-3665-2009
C.M.No.569-C-2013 in Cross Obj.3-C-2013 in RSA-3667-2009
C.M.No.566-C-2013 in Cross Obj.2-C-2013 in RSA-3669-2009
C.M.No.572-C-2013 in Cross Obj.4-C-2013 in RSA-4434-2009

3. For the reasons mentioned in these applications, which are supported by the affidavits, the delay of 662 days in filing the cross-objections in the appeal is condoned.

4. CMs stand disposed of.

C.M.No.5892-C-2017 in RSA-3667-2009

5. For the reasons stated in the application which is supported by

an affidavit, the application for bringing on record the legal representatives of deceased late Sh. Parvinder Singh [appellant no.1] mentioned in amended memorandum of parties, is allowed, subject to all the just exceptions.

6. The amended memo of parties is taken on record.

7. CM stands disposed of.

C.M.No.12505-C-2013 in RSA-3667-2009
C.M.No.12506-C-2013 in RSA-4434-2009

8. For the reasons stated in these applications which are supported by the affidavits, the applications for bringing on record the legal representatives of deceased late Sh. Ram Kala [respondent no.1] mentioned in paragraph 2 of the application, are allowed, subject to all the just exceptions.

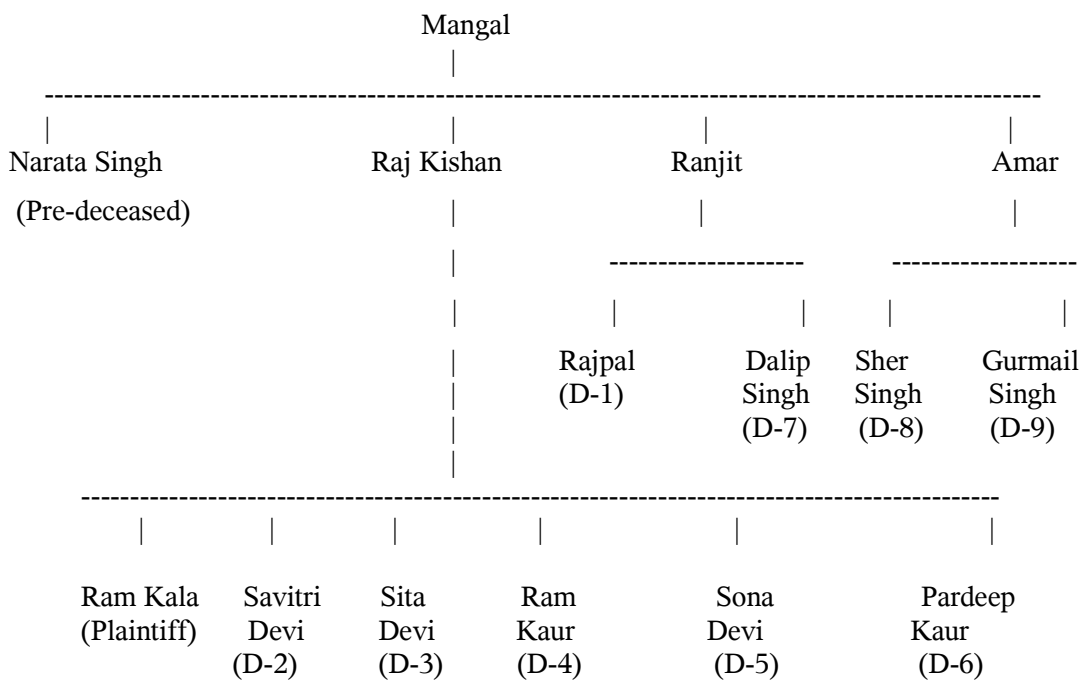
9. The amended memo of parties is taken on record.

10. CMs stand disposed of.

MAIN

11. A bunch of four connected Regular Second Appeals and equal number of cross-objections arising from a common judgment passed by the trial Court as well as the First Appellate Court shall stand disposed of by a common order. After having heard the learned counsel representing the parties, this Court is of the considered view that these eight cases are not required to be decided by a detailed judgment in view of subsequent developments.

12. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed. A short pedigree tree of the family is drawn as under:-



13. Sh. Raj Kishan executed two registered gift deeds. The first gift deed was executed on 01.09.1997, with respect to land measuring 16 Kanals and 15 Marlas in favour of Sh. Raj Pal son of Sh. Ranjit. The second gift deed was executed on 14.10.1997, by Sh. Raj Kishan in favour of his 5 daughters namely, Savitri Devi, Sita Devi, Ram Kaur, Sona Devi and Pardeep Kaur. Sh. Ram Kala filed a suit for declaration that the property was joint Hindu Family Coparcenary property. Hence, Sh. Raj Kishan has no right to alienate the property by executing gift deeds. Defendant Nos.2 to 6, namely, the five daughters of Sh. Raj Kishan sold the land measuring 16 Kanal 15 Marla in favour of defendant Nos.10 to 12. On 19.05.1998, Sh. Ram Kala son of Sh. Ram Kishan filed a suit claiming that the property was Joint Hindu Family Coparcenary property and Sh. Raj Kishan being ‘Karta’ of the Joint Family had no right to alienate the property. The gift deeds were also stated to be result of a fraud. It was also alleged that Sh. Raj Kishan was not of sound disposing mind. The plaintiff also alleged that Sh. Raj Kishan separated from his brothers 40 years back.

14. Defendants contested the suit while alleging that Sh. Raj Kishan disowned the plaintiff 5 years ago while giving him a residential plot and Rs.50,000/- in cash. The plaintiff has already constructed his house and is residing therein. He is un-married and addicted to bad habits, due to which the father Sh. Raj Kishan disowned him.

15. The trial Court decreed the suit by declaring that the gift deeds were illegal as the property was ancestral property. The plaintiff was entitled to $\frac{1}{2}$ share. Hence, the suit to the extent of $\frac{1}{2}$ share was decreed.

16. The first Appellate Court affirmed the findings of the trial Court but modified the judgment by declaring that Sh. Ram Kalan was lunatic and he will not be entitled to sell the property without the permission of the Court. The first Appellate Court also declared that Sh. Ram Kala would be entitled to $\frac{1}{2}$ share in the house and 'bara'.

17. During the pendency of the appeal, Sh. Ram Kala died issueless. His five daughters have come forward as legal representatives of Sh. Ram Kala.

18. On 01.05.2024, after hearing learned counsel representing the parties, the following order was recorded:-

“The learned counsel representing the parties have been heard at substantive length.

Sh. Saurabh Bajaj, the learned counsel representing the appellants in Regular Second Appeal Nos.3665, 3667 and 3669-2009, submits that irrespective of the findings of the courts below, Sh. Ram Kala died issueless and his sisters have been brought on record as legal representatives. He submits that by applying

doctrine of feeding the title, the sisters have already sold the property in favour of the appellants. Hence, the three appeals are required to be allowed.

Sh. Ashok Kumar Khubber, the learned counsel representing the appellants in Regular Second appeal No.4434 of 2009, submits that Sh. Raj Kishan executed two registered gift deeds. The first was executed on 01.09.1997, which was registered on 03.09.1997, in favour of his nephew (Defendant no.1). The second gift deed was executed on 14.10. 1997, gifting the property in favour of his 5 daughters. He submits that in view of Section 48 of the Transfer of Property Act, the subsequently executed gift deed will have to be set aside even if the findings of the courts below is upheld.

The learned counsel representing the respondents pray for a short accommodation to examine the aforesaid developments before assisting the court. They pray that the case should be taken up tomorrow.

List, in the urgent list, on 02.05.2024.

To be taken at Sr. No.101, at 10:00 AM.

A photocopy of this order be placed on the files of the other connected cases.”

19. This Court has once again heard the learned counsel representing the parties.

20. It is evident that the appeal filed by Sh. Raj Pal is required to be accepted because the gift deed in his favour is prior in point of time. Section 48 of the Transfer of Property Act, 1882, provides that subsequently executed transfer deeds shall be subservient to the previously executed transfer deeds. Similarly, the gift deed dated 14.10.1997, was in favour of

five daughters of Sh. Raj Kishan, who in turn sold the property in favour of defendant Nos.10 to 12, vide registered sale deed dated 17.03.1998. Now after the death of Sh. Ram Kala, his five daughters have become owners of the property being successor-in-interest of their brother even if the findings of the Courts below is upheld. By invoking doctrine of feeding the title, the sale deed in favour of defendant Nos.10 to 12, is required to be upheld.

21. It may be noted here that the property which was not part of the two registered gift deeds would remain in the family of Sh. Raj Kishan.

22. This Court has examined the judgments of the Courts below. Sh. Ram Kala did not appear in evidence. The Courts below should have drawn adverse inference against him. Moreover, Sh. Ram Kalan failed to prove fraud. The defendants never got opportunity to cross-examine the witness. Still further, it was the positive case of the defendants that Sh. Raj Kishan disowned the plaintiff by giving him a plot on which house was constructed. He was also given Rs.50,000/- cash. The defendants would have got opportunity to cross-examine the witness in order to test the correctness of his assertions.

23. Keeping in view the aforesaid facts, all the four appeals are disposed of with the observation that the judgments passed by the courts below are set aside in view of subsequent developments. Sh. Raj Pal son of Sh. Ranjit would remain owner of the land measuring 16 kanals and 15 marlas by virtue of gift deed 01.09.1997, whereas defendant Nos.10 to 12 would remain owner of the property by virtue of the sale deed dated 17.03.1998.

Cross-objections

24. The learned senior counsel representing the cross-objectors has submitted that the finding of the first Appellate Court that Sh. Ram Kala was lunatic is required to be set aside. Sh. Ram Kalan has already died. In the facts and circumstances of the case, it is found un-necessary to go into the aforesaid issue.

25. Cross-objections stand disposed of.

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

May 02, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO