

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SAO-13-2015 (O&M)
Reserved on: 02.04.2024
Date of decision: 10.04.2024

DEVA SINGH AND ORS.

..Appellants

Versus

BED KAUR AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwani Kumar Chopra, Sr. Advocate
with Mr. Vidul Kapoor, Advocate
for appellants.

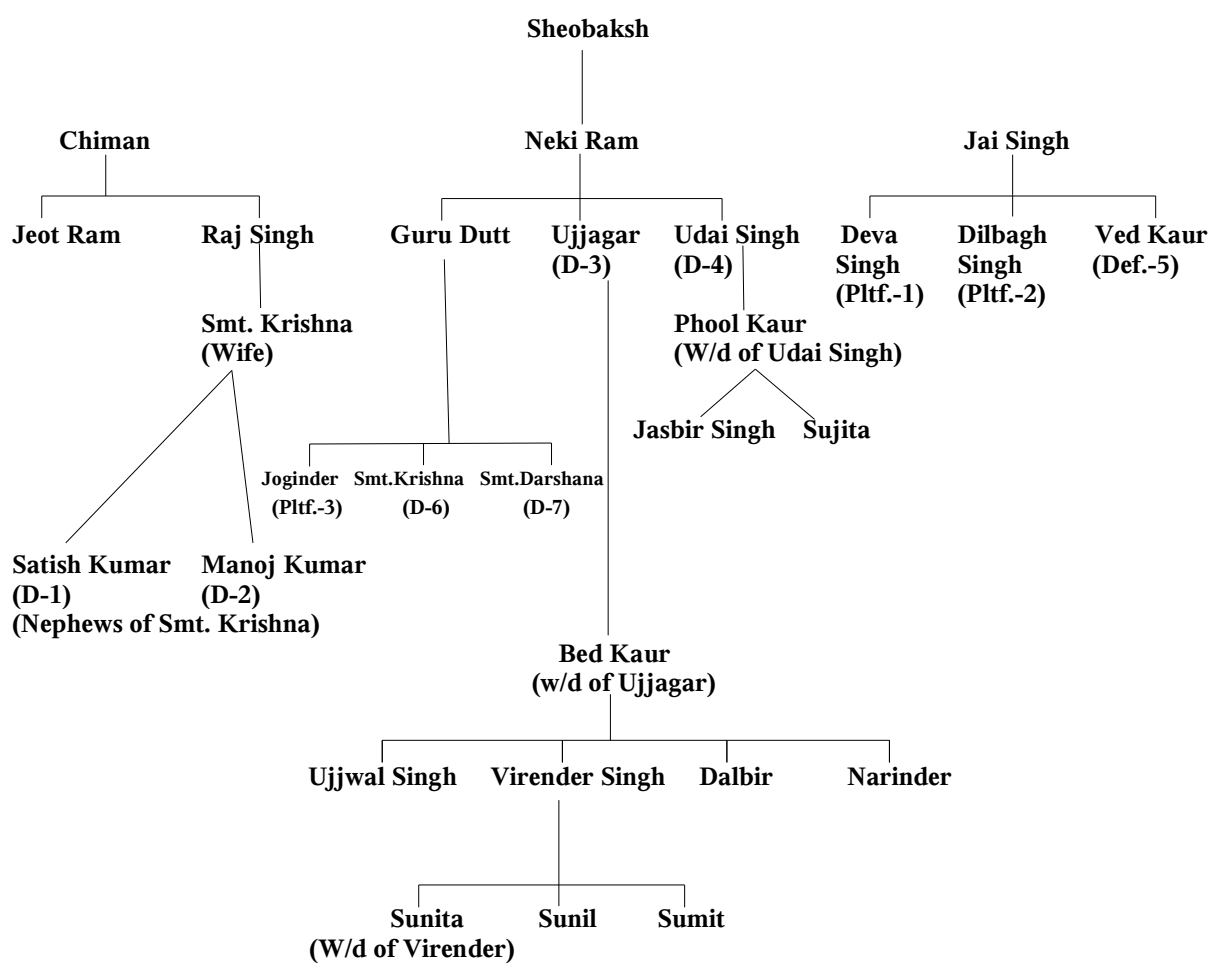
Mr. Chanderhas Yadav, Advocate
for respondent No.1 to 11.

Mr. Sandeep K. Sharma, Advocate
for respondent No.12 and 13.

ANIL KSHETARPAL, J.

1. This second appeal is filed against the order passed by the First Appellate Court on 10.12.2014, wherein, the First Appellate Court's order remitting the matter back to the trial Court for deciding afresh is challenged by the plaintiffs.

2. In order to comprehend the issue involved in the present case, pedigree table demonstrating the relationship of the parties and relevant facts, in brief, are required to be noticed, which is extracted as under:



3. The dispute is with regard to inheritance of the property left behind by Smt. Krishna widow of Sh. Raj Singh. The plaintiffs namely Sh. Deva Singh, Sh. Dilbagh Singh sons of Sh. Jai Singh, and Sh. Joginder Singh son of Sh. Guru Dutt filed a suit for grant of decree of declaration on the basis of natural succession. In this suit, Sh. Satish Kumar, Sh. Manoj Kumar were impleaded as defendants, whereas, Sh. Ujjagar Singh, Sh. Udai Singh, Smt. Bed Kaur, Smt. Krishna and Smt. Darshna were impleaded as proforma defendants.

4. In para five of the plaint, it was asserted as under:-

“5. That on the death of Smt. Krishna widow of Sh. Raj Singh, the succession opened up and the plaintiffs and defendants no.3 to 7 the legal heirs of the deceased succeed the estate of Smt. Krishna widow of Sh. Raj Singh and an application to this effect was also moved by the plaintiffs for entering and sanctioning the mutation of Virasat. Mutation No.5752 was entire in revenue record by Halka Patwari.”

5. Thus, it is evident that it is the case of plaintiffs that they along

with defendant No.3 to 7 are heirs of deceased Smt. Krishna widow of Sh. Raj Singh. During the pendency of the suit, two sisters of Sh. Raj Singh filed an application for impleadment which was dismissed. Defendant No. 1 and 2 contested the suit on the ground that Smt. Krishna executed a Will in their favour. Proforma defendants were proceeded against ex parte as no relief against them was sought. Defendant No.3 and 4 admitted that Smt. Krishna executed a Will in favour of Sh. Satish Kumar and Sh. Manoj Kumar.

6. During the pendency of the suit, a settlement was arrived at between Sh. Deva Singh, Sh. Dilbagh Singh, Sh. Joginder (plaintiffs) and Sh. Satish Kumar, Sh. Manoj Kumar, defendant No. 1 and 2. As per the settlement, plaintiffs and defendant No.1 and 2 divided the property half and half between themselves. Heirs of Sh. Ujjagar Singh and Sh. Udai Singh filed an appeal claiming that the decree passed on the basis of the settlement does not bind them and the trial Court could not have passed the judgment and decree on the basis of settlement without issuing notice to the appellants, which has been accepted by the First Appellate Court.

7. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

8. The learned Senior counsel representing the appellants has made the following submissions:-

- i. As per Section 96 (3) of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC"), no appeal was maintainable against compromise decree.
- ii. Defendant No. 3 and 4 were estopped from filing the suit, particularly, when they admitted that defendant No. 1 and 2 have succeeded the property by virtue of a Will

executed by Smt. Krishna, widow of Sh. Raj Singh.

9. On the other hand, he further submits that the respondents were proforma respondents and therefore, they could not file the appeal.

10. Per contra, the learned counsel representing the respondents have opposed the appeal.

11. This Court has considered the submission of the learned counsel representing the parties.

12. It is evident that the plaintiffs while filing the suit acknowledged that defendant No. 3 to 7 are also heirs of late Smt. Krishan along with them. In other words, the plaintiffs filed suit claiming that Smt. Krishna Rani's estate will fall to the share of the plaintiffs and defendant No. 3 to 7.

13. No doubt, defendant No. 3 and 4 conceded to the claim of the defendant No. 1 and 2 with respect to the Will. However, by virtue of settlement, half share of Smt. Krishna has come back to the plaintiffs, namely Sh. Deva Singh and Sh. Dilbagh Singh and Sh. Joginder. In this manner, the rights of proforma defendants are adversely affected. The proforma defendants were proceed against ex parte because no relief was sought by the plaintiffs. In fact, the plaintiffs were expounding the cause of proforma defendant No. 3 to 7. Defendant No.3 and 4 were not party to the settlement. In these circumstances, the trial Court committed an error in disposing of the suit on the basis of settlement.

14. With respect to the first submission of the learned Senior counsel, it may be noted that Section 96(3) of CPC do provide that no appeal shall lie from the decree passed by the Court with the consent of parties. However, it is nowhere provided that the parties, who have not given consent, will also not be entitled to file the appeal. The language used

in Section 96(3) of the CPC is categoric. That Parliament intended that no appeal should be entertained at the behest of a party who has given consent, The statute does not use the language that no appeal shall be maintainable against decree passed on the basis of the compromise. Hence, the judgment relied upon by the learned Senior counsel representing the appellants in **Pushpa Devi Bhagat (dead) through LRs versus Rajinder Singh and others, (2006) 5 SCC 566**, will not be applicable.

15. If the arguments of learned Senior counsel representing the appellants is accepted, the consequences would be serious and grave. Every party to the suit, who has not consented to the compromise decree will have to come to the High Court in a revision petition, which may not be economical feasible for a poor litigant. While interpreting the statute, the Court is required to examine the purpose behind the particular statute. It appears to me that the Parliament only intended that the party who had consented to the decree should be debarred from filing the appeal, however, it was never intended that the party who has not consented to the compromise decree should also be debarred from filing the first appeal.

16. This matter can be examined from yet another perspective. The decree passed on the basis of compromise is in fact an ex parte decree against defendant No.3 and 4 because he is not party to the compromise. An appeal is maintainable against ex parte decree. A learned Single Judge of the Rajasthan High Court in **Mohar Singh versus Hermale Singh and others, 2008(2) ILR (Rajasthan) 132**, has also concluded on the same lines. In **Katikara Chintamani Dora and others vs Guntreddi Annamnaidu and others, 1974 AIR 1069**, the Supreme Court while dealing with the question of appeal in the matter of consent decree, has observed as under:-

“Be that as it may,, the bar to an appeal against a consent decree, in Sub-Section (3) of Section 96 of the

Code is based on the broad principle of estoppel. It presupposes that the parties to an action can, expressly or by implication, waive or forego their right of appeal by any lawful, agreement or compromise, or even by conduct. Therefore, as soon as the parties made the agreement to abide by the determination in the, appeal (A.S. 668) and induced the court to pass a decree in terms of that agreement, the principle of estoppel underlying 196(3) became operative and the decree to the extent it was in terms of that agreement, became final and binding between the parties. And it was as effective in creating an estoppel between the parties as a judgment on, contest.”

17. Additionally, in such cases, the aggrieved person may file a review application before the same Court or file an appeal. Any other person, party to the suit but not party to the compromise is not precluded from assailing the validity of decree by way of appeal notwithstanding the provisions of Section 96(3) of the CPC. The Supreme Court has also held that the purpose behind bar to the maintainability of appeal under Sub-Section 3 of Section 96 of the CPC is based upon the broad principle of estoppel, which shall not be applicable in case the appeal is filed by the party to the suit but not party to the compromise decree.

18. The second submission of the learned Senior counsel representing the appellants also lacks substance because defendant No. 3 and 4 while filing the written statement, admitted execution of the Will by Smt. Krishna in favour of defendant No. 1 and 2, however, they never gave up their right if the property was to be apportioned on the basis of natural succession. In other words, defendant No. 3 and 4 have not stated that the plaintiffs are only entitled to the property on the basis of natural succession. They have at the most admitted that Smt. Krishna bequeathed the property in favour of defendant No. 1 and 2. However, this written statement would not result in depriving defendant No.3 and 4 from their share if the property was to come by natural succession from the estate of Smt. Krishna.

- 19. Keeping in view the aforesaid discussion, there is no ground to interfere.
- 20. Dismissed accordingly.
- 21. All the pending miscellaneous applications, if any, are also disposed of.

April 10th, 2024

Ay

Whether speaking/reasoned

Whether reportable

(ANIL KSHETARPAL)

JUDGE

: Yes/No

: Yes/No