

(2004) 07 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2004 of 1982

Ajmer Singh (Deceased) and Others

APPELLANT

Vs

Chanan Singh and Others

RESPONDENT

Date of Decision : 28-07-2004

Acts Referred:

Hindu Succession Act, 1956 — Section 2, 4(1)
Punjab Custom (Limitation) Act, 1920 — Section 8
Punjab Custom (Power to Contest) Act, 1920 — Section 6

Citation : (2005) 139 PLR 280 : (2005) 1 RCR(Civil) 33

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : Alka Sarin, for the Appellant; None, for the Respondent

Judgement

Viney Mittal, J.—This order shall dispose of the Regular Second Appeals No. 2004 and 2162 of 1982 as both the aforesaid appeals have arisen out of the common judgments and decree of the learned courts below. Whereas regular second appeal No. 2004 of 1982 has been filed by the plaintiffs Ajmer Singh and others challenging the judgment of the learned first appellate Court whereby the suit of the plaintiffs has merely been decreed to the extent of 1/2 share in the suit land, the other regular second appeal No. 2162 of 1982 has been filed by the defendant challenging the aforesaid judgment of the learned first appellate court making a grievance even against decreeing the suit of the plaintiffs to the extent of 1/2 share.

2. The plaintiffs filed a suit for possession of the land measuring 41 kanals 11 marlas. It was claimed by the plaintiffs that Kapur Singh (father of the plaintiffs) and his brother Amdoor Singh had sold the land measuring 16 kanals 8 marlas to Ganga Singh, defendant, vide sale deed dated April 15, 1941. The said sale deed was registered on April 21, 1941. The usual declaratory suit was filed by the plaintiffs challenging the aforesaid sale deed on the ground that the said land being the ancestral property could not be sold by the aforesaid vendors and, as

such, it was claimed that the said sale was ineffective qua the reversionary rights of the aforesaid plaintiffs. The said suit was decreed by the learned trial Court vide judgment and decree dated November 22, 1945 qua the entire land except khasra No. 4607. The aforesaid judgment is Ex.P2 whereas the decree passed in the said suit is Ex.P9 on the record. It was held that the plaintiffs in the aforesaid suit would be entitled to get possession of the said land without payment of sale price after the death of Kapur Singh and Amdoor Singh. The plaintiffs claimed that Amdoor Singh died on August 16, 1974. Father of the plaintiffs, Kapur Singh, died on June 18, 1975. Accordingly, the plaintiffs filed the present suit for possession on January 23, 1976. It was specifically claimed by the plaintiffs that there was no other heir of aforesaid vendors except the plaintiffs. Since the consolidation proceedings had taken place in the village, therefore, it was pleaded that the suit land mentioned in the plaint was allotted to Ganga Singh in lieu of the land originally sold by the vendors.

3. The suit was contested by defendant-Ganga Singh. Various technical objections were taken by the defendant. It was claimed that Amdoor Singh also had a daughter who had inherited his estate and, therefore, the plaintiffs could not be treated to be reversioners of Amdoor Singh nor did they have any right to claim the estate of Amdoor Singh. Additionally, it was claimed that customary law had been abrogated and, as such, decree dated November 22, 1945 could not be enforced, in any manner. Another plea was taken that the suit land did not correspond to the land mentioned in the sale deed dated April 15, 1941 and the decree dated November 22, 1945.

4. The learned trial Court on the basis of the evidence available on the record found that the suit land was allotted to Ganga Singh, defendant, during the consolidation proceedings in lieu of the land sold to him by the vendors, Kapur Singh and Amdoor Singh through the sale deed dated April 15, 1941. It was further held that defendant, Ganga Singh, had completely failed to prove that Amdoor Singh had any other heir who had any title or interest to succeed to his estate. The learned trial Court further held that on the passing of the earlier decree the land stood restored to the estate of original vendors Kapur Singh and Amdoor Singh and, therefore, the aforesaid decree dated November 22, 1945 would be for the benefit of all the reversioners and, therefore, plaintiffs No. 1 to 3 were entitled to get the suit land. It was further held that even after the amending Act, 1973 whereby the Punjab Customs (Powers to Contest) Act, 1920 had been repealed, the earlier decree still remained operative and binding between the parties and, therefore, the plaintiffs had a right to seek the possession. On the basis of the aforesaid findings, the suit filed by the plaintiffs was decreed.

5. The defendant took up the matter in appeal. The learned first appellate Court, reappraised the entire evidence and also re-examined the controversy. On such reappraisal and re-examination, the learned first appellate Court found that Gurnam Singh, plaintiff while appearing as PW2 in his cross-examination had

also stated that Kapur Singh had three daughters, Ajmer Kaur, Surjit Kaur and Swaran Kaur and although no such plea had been taken by the defendant in his written statement but because of the aforesaid statement of Gurnam Singh, plaintiff, the plaintiffs were merely entitled to half share of the suit property qua their own share. Accordingly, the appeal filed by the defendant was partly allowed and the suit of the plaintiffs was decreed to the extent of 1/2 share.

6. The plaintiffs have now approached this Court through the regular second appeal No. 2004 of 1982 challenging the judgment of the learned first appellate Court to the extent that their suit qua 1/2 share of the suit land has been dismissed. Similarly, the defendant has approached this Court through the regular second appeal No. 2162 of 1982 even challenging the decreeing of the suit of the plaintiffs to the extent of 1/2 share.

7. No one has chosen to appear on behalf of the defendant inspite of various adjournments granted for the aforesaid purpose. Accordingly, I have heard Ms. Alka Sarin, Advocate, the learned counsel appearing for the plaintiff-appellants and with her assistance have also gone through the entire record of the case.

8. After hearing the learned counsel, I find that the following substantial questions of law arise for consideration in the present appeals:

(a) As to whether the suit filed by the plaintiffs was not liable to be decreed in toto in view of the fact that defendant, Ganga Singh, has not been able to show that he had any subsisting interest in the suit land after the death of Kapur Singh and Amdoor Singh?

(b) As to whether the plaintiffs were not entitled to claim the entire suit land covered by the sale deed dated April 15, 1941 and the decree dated November 22, 1945 since the defendant had not taken any plea with regard to Kapur Singh having any daughter?

(c) As to whether the learned first appellate Court having travelled beyond the pleadings of the parties, its judgment and decree in dismissing the claim of the plaintiffs qua half share of the suit land being judicially perverse, are not sustainable in law?

9. Ms. Alka Sarin, the learned counsel appearing for the plaintiffs has vehemently argued that once the plaintiffs had been able to show that the decree dated November 22, 1945 had been passed declaring the sale deed dated April 15, 1941 to be ineffective qua reversionary rights of the plaintiffs, then defendant, Ganga Singh, could not be heard any more to claim that he still had any right in the suit land even to the extent of 1/2 share. It has further been argued by the learned counsel that no plea had been taken by defendant, Ganga Singh, in his written statement that Kapur Singh was survived by any daughters. On that basis, it is argued by the learned counsel that the learned first appellate Court has completely travelled beyond the pleadings of the parties when it has dismissed the claim of the plaintiffs to the extent of 1/2 share by holding that

Kapur Singh was survived by three daughters. It has further been argued by the learned counsel that in any case, defendant, Ganga Singh had no subsisting interest in the suit land and, therefore, after the death of vendors Kapur Singh and Amdoor Singh, the plaintiffs were entitled to have possession of the entire suit land covered by the sale deed and the declaratory decree and if at all, anybody else had any right to succeed to the estate of the aforesaid vendors, then such a person could always seek his/her remedies by initiating separate proceedings against the plaintiffs.

10. I have duly considered the aforesaid arguments raised by the learned counsel for the plaintiffs and in my considered view, the said contentions deserve to be accepted.

11. At the out set, it may be advantageous to note the proposition of law laid down by the Apex Court in the case of Giasi Ram and Others Vs. Ramjilal and Others, as follows:

"6. The Punjab Custom (Power to Contest) Act I of 1920 was enacted to restrict the rights exercisable by members of the family to contest alienations made by" a holder of ancestral property. By virtue of Section 6 of the Act no person is entitled to contest an alienation of ancestral immovable property unless he is descended in the male line from the great-great grandfather of the alienor. Under the customary law in force in the Punjab, a declaratory decree obtained by the reversionary heir in an action to set aside the alienation of ancestral property ensured in favour of all persons who ultimately took the estate on the death of the alienor, for the object of a declaratory suit filed by a reversionary heir impeaching an alienation of ancestral estate was to remove a common apprehended injury, in the interest of the reversions. The decree did not make the alienation a nullity it removed the obstacle to the right of the reversioner entitled to succeed when the succession opened. By the decree passed in suit No. 75 of 1920 filed by Giasi Ram, it was declared that the alienations by Jwala were not binding after his lifetime and the property will revert to his estate. It is true that under the customary law the wife and the daughters of a holder of ancestral property could not sue to obtain a declaration that the alienation of ancestral property will not bind the reversioner after the death of the alienor. But a declaratory decree competent to sue has the effect of restoring the property alienated to the estate of the alienor.

7. The effect of the declaratory decree in suit No. 75 of 1920 was merely to declare that by the sale interest conveyed in favour of the alienee was to ensure during the life time of the alienor, The conclusion is therefore inevitable that the property alienated reverted to the estate of Jwala at the point of his death and all persons who would, but for the alienation, have taken the estate will be entitled to inherit the same. It Jwala had died before Hindu succession Act, 1956 was enacted the three sons would have taken the estate to the exclusion of the widow and the two daughters. After the enactment of the Hindu Succession Act, the estate devolved by virtue of Ss. 2 and 4(1) of the Hindu Succession Act,

1956, upon the three sons, the widow and the two daughters. We are unable to agree with the High Court that because in the year 1920 the wife and the daughters of Jwala were incompetent to challenge the alienation of ancestral property by Jwala, they could not, after the enactment of the Hindu Succession Act, inherit his estate when succession opened after that Act came into force.

8. The second ground on which the learned Judge has founded his judgment also does not appeal to us. The three sons, the two daughters and the widow of Jwala had filed the suit claiming possession of the entire property from the alienee. The suit was decreed by the Trial Court in favour of the sons only to the extent of a half share in the property alienated. The Court held that the widow and the daughters were not entitled to a share because only those persons can bring a suit for possession on the death of Jwala who had the right to challenge the alienation made by Jwala. In appeal, the District Court granted a decree for possession of the entire property on the view that the alienee had no subsisting interest after the death of Jwala. But the District Court granted a decree for possession of the entire property alienated only in favour of the three sons, because in the view of the Court the daughters and the widow of Jwala were not entitled to any share in the property. According to the High Court if the widow and the daughters are entitled to the share in the property, they had disentitled themselves to that right, because they had not preferred appeal or filed cross objections to the decree appealed from. The sons, daughters and widow of Jwala filed a suit for a decree for possession of the entire property and their primary claim was that the alienee had no subsisting interest. The District Court accepted that claim and granted a decree in favour of the three sons for the entire property which was alienated. If the alienees are unable to convince the court that they had any subsisting interest in the property in dispute after the death of Jwala the Court will be competent to adjust the rights between the sons, the daughters and the widow of Jwala in that property."

12. The aforesaid proposition of law was again considered by the Hon'ble Supreme Court in Teg Singh and Others Vs. Charan Singh and Another, and the following observations were made:-

"7. The decision of this Court in Giasi Ram v. Ramji Lal, (supra) may, with advantage, be referred to on this point. Under the customary law of the Punjab, the wife and daughters of a holder of ancestral property could not sue to obtain a declaration that the alienation of ancestral property will not bind the reversioners after the death of the alienor. But the reversioner who was entitled to challenge that alienation could obtain a declaration decree that the alienation will not bind the reversioners after the alienor's death. It was held by this Court that such a declaratory decree had the effect of restoring the property alienated to the estate of the alienor and therefore all persons, including the wife and the daughters of the deceased, were titled to the benefit of that restoration. Since the property alienated had reverted to the estate of the alienor at the point of his death, the widow and daughters, who also became heirs along with the sons under the

Hindu Succession Act, 1956 were held entitled to obtain possession of the ancestral property. Mr. Juneja attempted to get over the effect of this decision by involving the provisions of Section 8 of the Punjab Limitation (Custom) Act, 1 of 1920, which provides that when a person obtains a decree of declaration that an alienation of ancestral immovable property is not binding on him according to custom, the decree shall ensure for the benefit of all persons entitled to impeach the alienation. Counsel argues that since the respondent was not entitled to impeach the gift in favour of Bhagwati Devi, having been adopted after the date of the gift, the decree obtained by appellants 1 to 12 cannot ensure for his benefit. The short answer to this contention is that the decree would ensure for the benefit of all persons who are entitled to a share in the property of the deceased as it existed at the moment of his death. Since Mula's property stood freed from the encumbrance of the gift at the moment of his death, respondent as the adopted son would be entitled to the possession of the gift property."

13. From the aforesaid law laid down by the Apex Court, it emerges that the effect of a declaratory decree passed in favour of the reversioners is to restore the property alienated to the estate of the alienor and it was, thereafter, for the alienee to show to the court that he had any subsisting interest in the property in dispute after the death of the alienor.

14. It is not in dispute that the land in dispute is the same which was covered under the sale deed dated April 5, 1941 as well as the decree dated November 22, 1945 (Ex.P2). No claim has been made by defendant, Ganga Singh, that he had any subsisting interest in the suit land after the death of Amdoor Singh on August 16, 1974 and the death of Kapur Singh on June 18, 1975. Thus, when the alienee-defendant, Ganga Singh, had no subsisting interest in the suit property, no objection would have been raised by him with regard to the title and rights of the plaintiffs, who are admittedly the sons of Kapur Singh. I have also gone through the written statement filed by the defendant. No plea has been taken by the aforesaid defendant that Kapur Singh was survived by any daughter. Of course, a plea has been taken with regard to Amdoor Singh, alienor, having a daughter but the aforesaid plea has been rejected by the learned courts below, since no evidence was led by the defendant to prove the aforesaid fact. In these circumstances, merely because PW2 Gurnam Singh, plaintiff during his cross-examination had stated that Kapur Singh also had three daughters, the claim made by the plaintiffs could not have been rejected. After the death of Kapur Singh, the plaintiffs had a right to succeed to his estate. If Kapur Singh had any daughters also, then it would be an inter-se matter between the plaintiffs and the aforesaid daughters. Defendant, Ganga Singh being a stranger to the claim had no right to object to the claim made by the plaintiffs. In any case, no objection having been raised by the defendant, in the written statement, the learned first appellant Court was wholly unjustified in making out a new case for the defendant. If any such objection would have been raised by the defendant, then the plaintiffs could have met the same. They could, then, show that because of some will etc. they alone were entitled to succeed to the estate of alienor,

Kapur Singh: In fact, parties were never at issue on that point.

15. The only question which should weigh with the court in deciding the present controversy is as to whether Ganga Singh, defendant, has any subsisting interest in the suit property? Obviously, the answer to the aforesaid question is in the negative. Nothing has been pleaded or proved by defendant, Ganga Singh that he had any subsisting interest in the suit land after the death of the alienors. In view of the law laid down by the Apex Court in Giasi Ram's case (supra) and Teg Singh's case (supra), the claim of the plaintiffs to the suit property could not have been rejected to any extent.

16. In view of the aforesaid discussion, the aforesaid substantial questions (a), (b) and (c) are answered in affirmative and in favour of the plaintiffs.

17. Accordingly, regular second appeal No. 2004 of 1982 filed by the plaintiffs is allowed and consequently after the modification of the judgment and decree of the learned first appellate Court, the decree of the learned trial Court is restored and the suit filed by the plaintiffs is decreed in toto.

18. As a natural consequence thereof, regular second appeal no. 2162 of 1982 filed by the defendant is dismissed.

19. There shall be no order as to costs in both the appeals.