

(2010) 04 P&H CK 0288
In the Punjab And Haryana At Chandigarh

Ashok Kumar and Gora Lal Tiwari and Others	APPELLANT
Vs	
Jagjit Singh and Others Yadvinder Singh and Others Vs Rajeshwar Kumar and Others Rajeshwar Kumar Vs Niranjan Singh and Others	RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 35A

Citation : (2010) 04 P&H CK 0288

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Judgement

Alok Singh, J.—Present second appeal is filed by the plaintiff-appellant assailing judgment and decree dated 10.9.1981 passed by trial Court/Sub Judge Ist Class, Nabha in suit No. 174 of 12.4.1980 as well as judgment and decree dated 8.6.1982 passed by First Appellate Court/ADJ, Patiala.

2. Brief facts of the present case are that two sons of Gora Lal Tiwari filed suit for permanent injunction restraining the defendants from interfering in their possession over the suit land measuring 5 kanals, 18 marals comprising in Khasra No. 317/1/2 situated in Nabha. It is important to mention herein that Gora Lal Tiwari is appellant in RSA No. 2802 of 1985 and was defendant No. 2 in suit No. 148 of 28.4.1975. It is also important to mention that property of Khasra No. 317 subject matter of this suit and appeal was also subject matter of suit No. 148 (RSA No. 2802 of 1985). Defendant No. 2 of the present suit was the plaintiff in Civil Suit No. 148 (RSA No. 2802 of 1985) and defendant No. 1 of present suit is the husband of the plaintiff of suit No. 148 (RSA No. 2802 of 1985).

3. Main case of the plaintiff is that both the plaintiffs received property of Khasra No. 317/1/2 from their father Gora Lal Tiwari by way of gift. And while defendant of the present case pleaded that defendant No. 2 is owner of the property in view of the judgment dated 6.3.1980 passed in suit No. 148. It is important to

mention that decree of suit No. 148 is impugned in above RSA No. 2802 of 1985. Both the Courts below dismissed the suit of the plaintiff-appellant. In view of the judgment and decree dated 6.3.1980 which is impugned in RSA No. 2802 of 1985.

RSA No. 1425 of 1995

4. Present second appeal is filed against the judgment and decree dated 3.11.1989 passed by Sub Judge Ist Class, Nabha in suit No. 267 of 11.8.1986 as well as against the judgment and decree dated 1.3.1995 passed by First Appellate Court/ADJ Patiala. In the present case property in dispute is part of Khasra No. 316 and 317. Khasra No. 316 and 317 are also disputed in Civil Suit No. 148 (RSA No. 2802 of 1985). In the present case plaintiffs are claiming having derived title from Kaushalya Devi plaintiff of suit No. 148 (RSA No. 2802 of 1985). Defendants of the present case are Gora Lal and his sons. Gora Lal is defendant No. 2 in suit No. 148 (RSA No. 2802 of 1985). Source of title of present suit is inter-linked with Civil Suit No. 148 (RSA No. 2802 of 1985). In the present case plaintiffs have filed suit for permanent injunction against the defendants which was dismissed both the Courts below.

RSA No. 1148 of 2002

5. Present appeal has been filed by the plaintiff-appellant against the judgment and decree dated 10.11.1999 passed by Civil Judge (Jr. Divn.), Nabha as well as against the judgment and decree dated 25.9.2001 passed by First Appellate Court/ADJ, Patiala.

6. Plaintiff-appellant of the present case is one of the sons of defendants in suit No. 148 (RSA No. 2802 of 1985). Defendants-respondents of the present case are alleged transferees from Kaushalya Devi plaintiff of suit No. 148 (RSA No. 2802 of 1985) hereinabove. Property in dispute in the present matter is Khasra No. 316 which is also subject matter of RSA No. 2802 of 1985.

7. Cases/appeals would be decided on the basis of decision between Kaushalya Devi and Savitiri Devi main parties of suit No. 148 (RSA No. 2802 of 1985), hence, RSA No. 2802 is being taken as leading case.

RSA No. 2802 of 1985

8. Present second appeal is filed by the defendants-appellants impugning the judgment and decree dated 6.3.1980 passed by trial Court/Sub Judge-II, Nabha in Civil Suit No. 148 of 28.4.1975 as well as judgment and decree dated 29.7.1985 passed by First Appellate Court/ADJ, Patiala.

9. Brief facts of the present case are that plaintiffs have filed suit for declaration declaring that the plaintiffs are the owner of ? share in the property in dispute fully described in the body of the plaint along with the half share of the Savitiri Devi defendant No. 1 only. Other defendants have no rights in the property in dispute. Contentions of the plaintiff in the plaint inter alia are that on 19.6.1974

Savitiri Devi defendant No. 1 agreed to purchase half share of the plaintiff for Rs. 1,10,000/- and an agreement to sell was executed on the same day; Sale deed was to be executed on or before 31.12.1974; on 18.12.1974 another agreement was executed between the parties by which it was agreed that instead of one sale deed, three sale deeds would be executed of equal denomination so that total sale price of three sale deeds would be Rs. 1,10,000/- only; defendants committed breach of contract and failed to get all the three sale deeds executed and registered within stipulated time as mentioned in the agreement; plaintiff issued registered notice on 10.3.1975 to the defendant No. 1 asking the defendant to get sale deeds executed as agreed between the parties; reply notice dated 9.4.1975 was sent mentioning therein that Gora Lal- defendant got mutation No. 3532 entered in his favour on the basis of a gift in his favour with respect of the land of Khasra No. 317 duly recognized and accepted in a decree passed by Sub Judge Ist Class, Nabha dated 14.6.1972; said decree dated 14.6.1972 is nullity and does not confer any right on the defendants; plaintiffs did not gift away any portion of the suit property in favour of defendant No. 2; no registered gift deed was executed; on 17.6.1972 Gora Lal-defendant executed an agreement in favour of the plaintiff admitting that decree dated 14.6.1972 is nullity and is only a paper transaction and is ineffective qua the rights of the plaintiff; the intention of the parties was that alleged gift as mentioned in decree dated 14.6.1972 shall remain a paper transaction and decree dated 14.6.1972 would not be acted upon and as such the alleged decree and gift deed are sham transactions and collusive.

10. Defendants contested the suit by way of filing written statement. Defendants pleaded that out of Khasra No. 317 plaintiff had already sold 1 Bigha 13 Biswa to Habhajan Kaur and out of out of 5 Bighas 18 Biswas of said Khsara number the plaintiff gave her half share vide decree dated 14.6.1972; Savitri Devi also transferred her half share in favour of defendant No. 2 and mutation to the effect was duly sanctioned in the name of defendant No. 2; plaintiff is not entitled for any relief.

11. Learned trial Court has framed issues as under:

1. Whether the plaintiff is owner of the ? share in the suit land? OPD.
2. Whether the suit is not maintainable in the present form? OPD.
3. Whether the plaintiff is estopped from filing the suit? OPD.
4. Whether the suit is barred by the principle of res judicata and under Order 2 Rule 2 CPC? OPD.
5. Whether the defendant is entitled to special costs? OPD.
6. Whether the suit is bad for non-joinder of necessary parties.

6-A Whether the decree dated 14.6.1972 passed by Sub Judge Ist Class, Nabha in favour of Gora Lal defendant is a nullity on the grounds mentioned in para No.

7 of the plaint? OPP.

7. Relief.

12. Learned trial Court has held that in fact no gift or transfer was made by plaintiff and alleged decree dated 14.6.1972 was collusive decree and was agreed to be paper transaction, hence, defendants did not acquire any right or title pursuant to the decree dated 14.6.1972. Learned trial Court further observed that it is proved that land of Khasra No. 315 was transferred by the plaintiff hence, except Khasra No. 315, plaintiff is entitled for the declaration to the effect that she is the joint owner to the extent of half share. Defendants preferred first appeal which was dismissed vide impugned judgment dated 29.7.1985 of First Appellate Court.

13. I have heard learned Counsel for the parties and perused the record.

14. Learned Counsel for the appellant vehemently argued that in a suit filed by the plaintiffs-respondents no relief was claimed either declaring the decree dated 14.6.1972 null and void nor any relief was sought for setting aside/cancelling decree dated 14.6.1972 hence, without any relief being claimed both the Courts below have exceeded in their jurisdiction by declaring decree dated 14.6.1972 null and void.

15. Learned Counsel for the plaintiffs-respondents vehemently argued that since alleged gift was oral gift and, decree dated 14.6.1972 was agreed upon to be a paper transaction only hence decree dated 14.6.1972 is null and void.

16. I have heard leaned counsel for the parties. In the present appeal following substantial questions of law are being formulated for just and fair adjudication of the lis between the parties:

(i) As to whether Court can grant any relief which is not sought in view of Order 7 Rule 7 CPC?

(ii) As to whether plaintiff is entitled for declaration declaring the decreed dated 14.6.1972 is null and void which was obtained with the consent of the parties?

(iii) As to whether compensatory costs u/s 35-A CPC can be imposed on both the parties for malicious claims and for abuse of process of law and for wasting valuable time of the Court? If yes amount of cost?

17. Answer to Substantial Question of law No. 1 and 2.-Undisputedly no relief is claimed in the plaint seeking declaration declaring the decree dated 14.6.1972 null and void or seeking relief of cancellation cancelling the decree dated 14.6.1972. Undisputedly no court fee has been paid by the plaintiff for such relief. Order 7 Rule 7 CPC reads as under:

Relief to be specifically stated.- Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the

court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

18. From the perusal of the Order 7, Rule 7 it can safely be said plaintiff has to state specially the relief claimed either simply or in the alternative. Court can grant such general or other relief which is just and proper in the opinion of the court in furtherance and to the extent of the relief claimed. However, ordinarily court should not grant any relief which is beyond the scope of the relief claimed.

19. Paragraph No. 7 (D) (F) of the plaint is being reproduced here under:

D) That on 17.6.1972, Gora Lal defendant, executed an agreement in favour of the plaintiff admitting that the decree of the civil court mentioned above is a nullity and is only a paper transaction and is ineffective qua the rights of the plaintiff, Gora Lal defendant holds General Power of Attorney, on behalf of Savitri Devi defendant and he has been acting in all these transactions in that capacity. Savitri Devi defendant is thus bound by his act.

F) That the intention of the parties was that the alleged gift-deed shall remain in a paper transaction and would not be acted upon. As such, the alleged decree and gift-deed are void and ineffective qua the rights of the plaintiff.

20. From the perusal of above pleadings, it is clear that decree dated 14.06.1972 was obtained by the plaintiff and defendant jointly with their respective consent. In the present case plaintiff is claiming that gift as well as decree was agreed upon between the parties to be paper transaction only. It means no fraud was played on the plaintiff in obtaining the decree. Plaintiff was party in the previous suit resulting in decree dated 14.06.1972. Court was having jurisdiction to pass decree dated 14.6.1972. It is also settled position of law that Court can pass appropriate decree with the consent of the parties, even if compromise is beyond the scope of the suit. Ordinarily courts, in India, do not deny compromise/consent orders. This is settled position of law that in a suit party can abandon, waive any right by way of compromise/settlement. Plaintiff once waived/abandoned her right in previous decree dated 14.6.1972 now cannot alleged that since gift was neither in writing nor registered hence, decree dated 14.6.1972 recognizing oral gift is bad in law. Present suit is barred by principle of estoppels, waiver and acquiesce.

21. Moreover explanation IV of Section 11 CPC defines constructive res judicata plea or defence ought to have taken not taken cannot be permitted to be taken in subsequent suit. Plaintiff ought to have taken defence in a previous suit, which resulted in decree dated 14.6.1972, that alleged gift is not valid, no gift was ever made, and alleged gift should not be accepted. Plaintiff had not taken any defence in a previous suit rather consented to pass decree recognizing alleged gift now in the present suit plaintiff cannot challenge the decree dated 14.6.1972 on the grounds which ought to have been taken in previous suit. To my mind present suit is also barred by principle of res judicata as provided in explanation IV of Section 11 CPC.

22. However, I am of the view that ordinarily decree obtained with the consent of the parties should not be declared null and void. No relief should ordinarily be granted by the Court without seeking specific relief by paying proper court fee in a suit. Subsequent suit for cancellation of decree or for declaration declaring decree passed in previous suit as null and void would lie only when plaintiff of the subsequent suit claims that impugned decree is outcome of fraud, misrepresentation played by opposite side on the plaintiff as well as on the court. In the present case plaintiff is not claiming that decree dated 14.06.1972 was obtained by playing fraud either on the plaintiff or on the court or was obtained in the back of the plaintiff. Hence, plaintiff is not entitled for any relief against the decree dated 14.06.1972. Both the substantial questions of law answered accordingly.

23. Answer to Substantial Question of law No. 3 - Undisputedly decree dated 14.06.1972 was obtained collusively with the consent of the parties. What was the object or intention to obtain decree is best known to the parties. But it can be said that object or intention was not justified, fair or bonafide. Obtaining consent decree with understanding that same shall remain on paper only and shall not be acted upon seems to be for ulterior motive. There cannot be any bonafide intention in obtaining consent decree with understanding that same shall not be acted upon. Both the parties misused process of law in obtaining the previous consent decree. Not only this both parties are guilty of playing fraud with the State exchequer by not paying stamp duty or registration fee on the alleged gift which was subject matter of decree dated 14.06.1972. In first round of litigation both the parties obtained decree and now plaintiff is challenging the same decree in the present suit which also amounts to abuse of process of law. Section 35A of CPC reads as under:

Compensatory costs in respect of vexatious claims or defences.-(1) If in any suit or other proceeding, [including an execution proceeding but [excluding an appeal or a revision]], any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, [if it so thinks fit], may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim has been put forward, of costs by way of compensation.

(2) No Court shall make such order for the payment of an amount exceeding [three thousand rupees] or exceeding the limit of its pecuniary jurisdiction, whichever amount is less:

Providing that where the pecuniary limits of the jurisdiction of any Court exercising in the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 (9 of 1887), [or under a corresponding law in force [any part of India to which the said Act does not extend]] and not being a Court

constituted [under such Act or law], are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this Section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this Section.

(3) No person against whom an order has made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this Section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent or damages or compensation in respect of such claim or defence.

24. From the perusal of Section 35A CPC it can safely be held that Court can impose compensatory cost if court finds either claim or counter-claim or defence to be false or vexatious. Misuse-abuse of process of law, wastage of court's time which otherwise is meant for genuine litigants, who are waiting for years to get result from the Courts, is also a ground to impose compensatory cost.

25. In view of above present RSA No. 2802 of 1985 stands allowed, judgment and decree passed by both the Courts below are set aside.

26. In view of dismissal of suit No. 148 by allowing RSA No. 2802 of 1985 neither Kaushalya Devi nor her legal heirs nor transferees could derive any title or interest in the property in dispute, hence, RSA No. 1425 of 1995 stands dismissed. RSA No. 2051 of 1982 and RSA No. 1148 of 2002 are allowed.

25. In view of findings recorded against substantial question No. 3 exemplary cost of Rs. 50,000/- each is imposed on the plaintiffs as well as on the defendants separately. It is made clear that plaintiffs of all the suits shall pay Rs. 50,000/- for each suit and defendants of all the suits shall also pay Rs. 50,000/- for each suit. Exemplary cost shall be paid to the High Court Legal Aid Committee. Parties are directed to pay cost within four weeks from today, if cost is not paid Collector/DC, Patiala shall be at liberty to recover the same as arrears of land revenue. Learned Collector/DC shall forward the collected amount to the High Court Legal Aid Committee. Registry of this Court shall forward copies of this judgment to the Collector/DC, Patiala and High Court Legal Aid Committee for information and compliance.

26. Photocopy of the order be placed in the connected cases.

In the peculiar facts and circumstances of the case and in view of the observations made hereinabove that both the parties are guilty of abusing the process of law in getting the decree dated 14.06.1972 and thereafter plaintiff is guilty of abusing the process of law by filing present suit and claims of both the parties to be false and vexatious. Both the parties not only the precious time of

this Court which was otherwise meant for the genuine litigants, hence I proposed to impose exemplary cost on the plaintiffs as well as on the defendant to the tune of Rs. 50,000/- each.

15. In view of above findings recorded while answering substantial questions of law No. 1 and 2, appeal stands allowed. Judgment and decree passed by both the courts below is set aside. Exemplary cost of Rs. 50,000/- each is imposed on the plaintiffs and on the defendants separately to be payable to the State Legal Authority, Punjab. Both the parties are directed to pay the cost within four weeks from today. If cost is not paid, Collector, Moga at liberty to recover the same as arrears of rent of land revenue and after recovery shall send the amount to State Legal Authority, Punjab. Since, no stamp duty and registration fee was paid on the alleged gift subject matter of decree dated 14.06.1972. Copy of this judgment be sent of Collector, Moga and State Legal Authority, Punjab for information and compliance.