
(2020) 12 P&H CK 0324

In the Punjab And Haryana At Chandigarh

Case No : Regular Cecond Appeal No. 4051 Of 2019 (O&M)

Kamla Devi

APPELLANT

Vs

Pushpa Devi Sharma And Others

RESPONDENT

Date of Decision : 17-12-2020

Acts Referred:

Hindu Succession Act, 1956 — Section 22, 22(1)

Citation : (2020) 12 P&H CK 0324

Hon'ble Judges : Rekha Mittal, J

Bench : Single Bench

Advocate : Bhavyadeep Walia

Final Decision : Dismissed

Judgement

Rekha Mittal, J

Challenge in the present appeal has been directed against judgment and decree dated 28.5.2019 passed by the Additional District Judge, Patiala

whereby appeal against judgment and decree dated 15.12.2015 passed by the trial court was allowed, impugned judgment and decree was reversed

and suit filed by the respondents-plaintiffs was decreed to the following effect:-

â??Keeping in view the peculiar circumstances and the fact that defendant No. 1 Narati Devi has already died. It would be better if the

plaintiff/appellants would give a notice in writing to respondent No. 2 within a period of two months from the decision of this appeal showing her

interest in purchase of the property to respondent No. 2 by tendering the sale consideration mentioned in sale deed dated 1.9.2009 and in the event of

doing so by the plaintiffs/appellants, the sale deed dated 1.9.2009 would be deemed to be set aside and respondent No. 2 would hand over the title

deed to the plaintiffs/appellants and would execute the sale deed of the share purchased by her from Narati Devi vide sale deed No. 6935 dated

1.9.2009 and execute the sale deed in favour of plaintiffs/appellants, failing which the plaintiffs-appellants would be liable to get her right enforced

through process of law and if the plaintiffs failed to do the needful as stated above, appeal will be deemed to have been dismissedâ??.

The respondents-plaintiffs staked their claim for declaration to the effect that sale deed dated 1.9.2009 executed by Narati Devi-defendant No. 1 in

favour of defendant No. 2, is illegal and void. It is averred that Jagdish Ram Sharma husband of plaintiff No. 1 and father of plaintiffs No. 2 and 3 was

owner of property measuring 2½ marlas out of khasra No. 66//6/7 (0-10) situated at Sidhu Colony, Jhill, Patiala. Plaintiffs are residing in suit

property and there is an electric connection. Jagdish Ram Sharma along with his son Shavinder Kumar expired in an accident on 14.6.2007. After

death of Jagdish Ram Sharma, plaintiffs and defendant No. 1 became owners to the extent of 1/4th share each. Vasudev son of Mohan Lal

fraudulently got impugned sale deed executed from defendant No. 1 in favour of defendant No. 2 with regard to her (defendant No. 1) 1/4th share.

The plaintiffs being legal heirs of Jagdish Ram Sharma have preferential right to purchase share of defendant No. 1.

The sole submission made by counsel for the appellant is that since Kamla Devi is the daughter-in-law of defendant No. 1 (since deceased) and not a

stranger to family of respondents-plaintiffs and Narati Devi defendant No. 1 could even transfer her share in the suit property either by way of gift or

testamentary succession, provisions of Section 22 of the Hindu Succession Act, 1956 (in short â??the Actâ?) should not be allowed to attract and as

such decree passed by the Appellate Court may be set aside.

I have heard counsel for the appellant and perused the paper book particularly the judgments passed by the courts.

Indisputably, the suit property was inherited by class-I heirs of Jagdish Ram Sharma as Jagdish Ram Sharma died on 14.6.2007. Narati Devi

defendant No. 1 being mother of deceased Jagdish Ram Sharma became entitle to 1/4th share in the suit property as remaining 3/4th share to the

extent of 1/4th share each was inherited by the plaintiffs being the widow and daughters of Jagdish Ram Sharma. The suit property is a house situated

in Sidhu Colony, Jhill, Patiala and its area is 2½ marlas.

Section 22 of the Act deals with preferential right to acquire property in certain cases. A relevant extract therefrom reads as follows:-

22. Preferential right to acquire property in certain cases.â?

(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her,

whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes

to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be

transferred.

Perusal of Sub Section (1) of Section 22 of the Act makes it evident that where an interest in any immovable property of an intestate devolves upon

two or more heirs specified in class I of the Schedule and any one of such heirs proposes to transfer his or her interest in the property, the other heirs

shall have a preferential right to acquire the interest proposed to be transferred.

Counsel tried to create a hypothetical situation that Narati Devi could transfer her share in the suit property in favour of the appellant on the basis of

testamentary succession, therefore, she is entitle to save her right in the suit property on the basis of sale deed as well. The contention raised by

counsel being the result of hypothetical situation need not be addressed by the court . He cannot seek any aid by raising such a contention when

examined in the light of provisions of Section 22 of the Act. In this view of the matter, I do not find an error much less illegality in the impugned

judgment that would call for intervention.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.