
(2004) 08 P&H CK 0056

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3007 of 1980

Lakhmira Singh and Others

APPELLANT

Vs

Amar Kaur and Others

RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9
Transfer of Property Act, 1882 — Section 52

Citation : (2005) 1 CivCC 413 : (2005) 139 PLR 94

Hon'ble Judges : Adarsh Kumar Goel, J

Bench : Single Bench

Advocate : R.K. Chhibbar and Anand Chhibbar, for the Appellant; K.D. Sachdeva, for Respondent Nos. 13 and 14, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—The appellants filed a suit for possession stating that Avtar Singh had sold the suit land on 21.8.1940 for Rs. 7750/-. The appellants who are sons of Avtar Singh, the appellants filed the present suit.

2. The suit was contested mainly on the plea of adverse possession and identity of the suit land.

3. That trial Court decreed the suit to the extent of 7/11th share in view of the fact that four daughters of Avtar Singh who had equal right in the suit property had not made any claim and seven plaintiffs were entitled to 7/11th share in the suit property. The trial Court held that the appellants were heirs of Avtar Singh (issue No. 1); identity of the suit land was established (Issues Nos. 2, 6 and 7); decree dated 12.4.1944 Ex.P10 was binding between the parties (Issue No. 3); transfer in favour of defendant Nos. 6, 7, 8 and 12 could not be held to be valid in view of doctrine of lis pendens; no decree could be passed qua the land sold to Jail Singh who was not made a party and the plaintiffs could obtain a decree only qua their shares and not qua the shares of the sisters (Issue Nos. 5, 5A and 5B); the defendants were not proved to be in adverse possession (Issue No. 8); suit

was within time (Issue No. 9), Labhu father of defendant Nos. 13 and 14 had become occupancy tenant in Killa No. 9/5/2 and therefore, with regard to that land, no decree could be passed in favour of the plaintiffs. Thus, decree was passed in favour of the plaintiffs to the extent of 7/11th share except for kill Nos. 34/25, 33/3, 4, 5 which were not traced to the land sold by Avtar Singh and Killa No. 9/5/2 on which occupancy rights of defendant Nos. 13 and 14 were recognised and half of the land in other Killa Nos. which were sold by Surain Singh to Zail Singh. On appeal, the findings of the trial court were affirmed. Hence this second appeal.

4. Mr. Chhibber, learned counsel on behalf of the appellants referred to order dated 3.2.1981 of this court passed in the present appeal, which is to the following effect:-

"This may be read in continuation of my order disposing of the connected appeals R.S.A. No. 2977 and 2978 of 1980. Mr. Chhibbar, the learned counsel for the appellants has submitted that four daughters of Avtar Singh vendor appeared as witnesses in the case and stated that the entire property had been left in favour of their brothers under a will and that a decree be passed in respect of the entire property in their favour. Mr. Harinder Singh appearing in the connected appeals did not bring this fact to my notice. In this case, notice of motion be issued to the respondents for 9.3.1981."

Order disposing of R.S.A. Nos. 2977 and 2978 of 1980 is as under:-

"The property in dispute was situated in Lyllpur District, now in Pakistan. It was sold on 21.8.1940 by Avtar Singh vendor. His reversioners brought a usual suit for declaration to the effect that the sale was not for legal necessity and the same shall be ineffective qua their reversionary rights. This suit was decreed on April 12, 1944. Avtar Singh vendor died on December 8, 1974. Earlier the property in dispute had passed in many hands. The vendees had sold it to one Charat Singh on 23.5.1958, who in turn had exchanged it with one Tara Singh on July 6, 1962. On the same day Tara Singh exchanged this land with the present appellant. The reversioners of Avtar Singh vendor brought a suit for possession of the property on August 27, 1976 on the basis of the earlier decree. This suit has been decreed qua the share of the seven reversioners of Avtar Singh vendor.

The learned counsel for the appellant has raised three points in this appeal. Firstly, it has been argued by him that the appellant was a transferee for a valuable consideration, without notice of the right of the reversioners of Avtar Singh, vendor and as such they could not be divested of this property. This plea has been rightly turned down by the learned lower appellate court on the basis of Section 52 of the Transfer of Property Act.

It was then argued that because of the amendment of Punjab Custom (Power to Contest) Act, 1973, the reversioners could not bring in suits for challenging the alienation made by a male land owner on the ground that it was governed by custom. In support of this plea, reliance is placed on a Division Bench judgment

of this Court in Bant Singh and Ors. v. Gurpreet Singh and Ors. 1973 P.L.J. 661. This plea is again without any merit because the reversioners are not challenging the alienation now. They are merely seeking the possession of the land in dispute on the basis of a decree already passed in their favour. Last of all it was submitted that Avtar Singh vendor had left behind eleven heirs out of whom only seven had brought in a suit for possession and since the other four heirs were the necessary parties, the suit as not competent without impleading them. In this connection, the learned counsel relies upon the language of Order 1 Rule 9 CPC and Profulla Chorone Requitee and Ors. v. Satya Chorone Requitee : AIR 1979 S.C. 1682. This plea is also without any merit. A necessary party is one in whose absence no effective decree can be passed by a Court. If there are 11 persons jointly interested in getting possession of the property and out of them only 7 persons file a suit, a decree can be effectively passed qua their share. This is precisely what has been done by the learned courts below. There is no merit in this appeal which is hereby dismissed."

5. Learned counsel for the appellants submitted that qua the share of daughters of Avtar Singh, suit of the plaintiffs ought to have been decreed as said daughters had prayed that a decree be passed with regard to their share in favour of the appellants. He submitted that following substantial questions of law arose:-

i) Whether the learned courts below were justified in decreeing the suit only to the extent of 7/11 in favour of the seven sons, when the four sisters stated that the entire property had been transferred in favour of their seven brothers?

ii) Whether the courts below were justified in deciding against the decision of the Apex, Court in Giasi Ram and Others Vs. Ramjilal and Others, .

6. Learned counsel for the appellants placed reliance on the decision of the Apex Court in Giani Ram's case (1970) 72 P.L.R. 9 (S.C.) (supra) to submit that even female heirs could claim the rights of reversioners as setting aside of alienation ensured in favour of persons almost took place on the death of the alienor. He also relied upon a DB judgment of this court in Surjit Singh Vs. Mohinder Pal Singh and Others, and a Single Bench judgment of this Court in Santokh Singh v. Gurmit Singh and Ors., R.S.A. No. 1898 of 1991, decided on 23.4.2004.

7. Learned counsel for the respondents supported the findings recorded by the courts below.

8. Question is whether plaintiffs could get the entire land on account of will or on account of statement made by their sisters admitting the will. This question has been gone into by the trial court and reasons given by the trial court are extracted below:-

"26. The plaintiffs did not deny the fact that Avtar Singh also left behind 4 daughters. They have produced all of them in the witness box as (PW10 to PW13). All of them stated that they are sisters of the plaintiffs and that a will

was executed by Avtar Singh in favour of his sons (plaintiffs) and they did not object to the same and they have no objection if the estate of Avtar Singh devolved upon the plaintiffs.

27. The declaratory decree was obtained by the plaintiffs on the ground that the alienation of land made by their father Avtar Singh was without any legal necessity. According to law, this land of Avtar Singh reverted to his estate at the time of his death, as then it is to be devolved upon his heirs according to law prevailing at that time. Admittedly he died after 1956 when the Hindu Succession Act had already come into force. It was held in *Giani Ram v. Ramji Lal* (1970) 72 P.L.R. 9, that though under the customary law, the wife and the daughters of an holder of ancestral property may not sue to obtain a declaration, that alienation of ancestral property will not bind the reversioners after the death of the alienee, yet a declaratory decree obtained in a suit instituted by a reversioner competent to sue has the effect of restoring the property alienated to the estate of the alienator. Hence all the heirs are competent to sue for the possession of the land alienated by the holder. In view of the ratio of this decision, the daughters after the death of Avtar Singh became entitled to inherit his property in accordance with Hindu Succession Act along with his sons namely the plaintiffs.

28. It was argued by the learned counsel for the plaintiffs that sisters are not necessary parties and as the plaintiffs are the co-owners, so they can sue defendants for the possession of the land which is to be fallen to the share of their sisters. He supported his argument by a decision reported in *Ram Niranjana Das and Another Vs. Loknath Mandal and Others*, He argued that a co-owner can bring a suit for possession of the property against the trespasser and other co-owners need not to be impleaded therein.

29. It was held in *Ram Niranjana Das and Another Vs. Loknath Mandal and Others*, that a co-owner alone can institute a suit for recovery of possession of land held by him alongwith other persons against the trespasser who dispossessed all the co-owners and can obtain a decree for recovery of possession of the entire area. The proposition of law laid down in this decision does not help the plffs. By no stretch of imagination, the defendants can be termed as tress-passers. Therefore, the contention of the plaintiffs that they can also sue for possession of the land in dispute on behalf of their sisters also does not hold any water.

30. Learned counsel for the plaintiffs also tried to stress upon the point that as the land in dispute was inherited by the plaintiffs in lieu of the will Ex.P7 which was executed by Avtar Singh in their favour, so their sisters are not necessary parties as Avtar Singh was competent to dispose the land in dispute by a will.

31. This argument of the Id. counsel for the plaintiffs has no force. Avtar Singh had no powers to dispose of the land in dispute by a will as he did not possess any interest therein at the time of his death. It was only after his death that the holders of the declaratory decree became entitled to the possession of this land

after the payment of a consideration. By this will Avtar Singh disposed of all the movable and immovable properties which he was holding at the time of his death.

32. From the above discussions, it is clear that Amarjit Kaur, Rajinder Kaur, Raghbir Kaur and Dalip Kaur, the daughters of Avtar Singh were the necessary parties to the suit. As they have not been impleaded as such, so the plaintiffs can obtain a decree, if any, for their share only."

9. The plaintiffs made an application before the lower appellate court for impleading the sisters as parties in the suit which was dismissed. It was observed:-

19. There cannot be any dispute regarding the proposition of law as laid down in the aforesaid authority but in the circumstances of the case, I do not find if they can be permitted to join when they themselves appeared as witnesses and stated that they have no interest in the property in dispute and they deposed in favour of the plaintiff as regards their claim. Moreover, in these circumstances, the application has become belated one and no explanation has been given why this application has been made at this belated stage when these applicants knew that a case was going on and their interests were involved. There is nothing in the application to show how they were awakened after such a long time to make this application. *Manmohan Singh v. Shri Sat Narain and Anr.* (1971) 73 P.L.R. 525 has also been relied upon by the counsel for the appellants that even if any relief is claimed against them, the matter cannot be effectively and completely settled on a dispute. I respectfully submit that the provision of law as laid down in this citation has not been disputed by the other side, but at the same time, I do not think that this is a case in which adding of the applicants as defendants will lead to multiplicity of proceedings because they do not claim any right, title or interest in the property in dispute and how in such circumstances they can be added that it will be futile to make them the defendants. Moreover, the applicants being the daughters of the deceased will not gain in any way. Rather it will prolong the litigation. The applicants being female heirs are competent to sue for possession of the land alienated but since they have already given up their claims in the property in dispute, they cannot get any benefit by becoming party to the litigation.

20. The contention of the counsel for the appellants is that the suit regarding share of the daughters should have been decreed and the plffs. were entitled to get the entire property as successors and that secondly, the daughters became the co-sharers and thus are entitled to sue for the entire land. But in my opinion, daughters have already relinquished their rights in the property in dispute when they made their statements as PWs. Therefore, the suit was rightly decreed qua the share of the plaintiffs.

10. I have considered the rival submissions and perused the record.

11. In view of DB judgment of this court in *Surjit Singh's* case (*supra*), the appellants are the sole heirs of the alienor who had also executed a Will in their

favour. The alienee on the death of the alienor was left with no subsisting interest in the suit property. Observations in the Division Bench judgment in Surjit Singh's case (supra) are as under: -

"...Thus, the alienee loses any subsisting right or interest in such property at the point of death of the alienor and it forms part of his estate. The successors of the deceased alienor shall inherit the same irrespective of the fact whether the succession is intestate or as a result of a testament by him..."

12. In Santokh Singh's case (supra), this court observed that legal heirs on the basis of will were entitled to seek possession of the property on the death of alienor.

13. In view of judgments of this court in Surjit Singh and Santokh Singh's cases (supra), the appellants are entitled to seek possession of the entire property instead of 7/11th share in view of will in their favour.

14. Accordingly, this appeal is allowed. Decree of the courts below is modified to the effect that the appellants will be entitled to the suit property of which 7/11th share has been decreed in their favour. It is made, clear that the decree in favour of the appellants will not cover killa Nos. 9/5/2 in respect of which it has been held that Labhu became occupancy tenant and will also not extend to killa Nos. 34/25, 33/3, 4 and 5 which were not traced to the land sold by Avtar Singh and half of the land in other killa Nos. which were sold by Surain Singh to Zail Singh who were not impleaded as parties.