
(2010) 03 P&H CK 0043
In the Punjab And Haryana At Chandigarh

Sohan Lal Jhanji and Another	Vs	APPELLANT
Rekha Jhanji Brar and Others		RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 52
Hindu Succession Act, 1956 — Section 15, 16

Citation : (2010) 3 CivCC 612 : (2010) 159 PLR 56

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Plaintiffs have filed the instant revision petition under Article 227 of the Constitution of India assailing order dated

21.10.2009 passed by learned Civil Judge (Junior Division), Jagraon, thereby partially allowing application moved by defendant-respondent No. 1

and striking off some parts of the plaint.

2. Plaintiffs are brothers of defendants No. 2 and 3, whereas defendant No. 1 is daughter of their elder brother Mohan Lal Jhanji (since

deceased). Vide plaint Annexure P-1, the plaintiffs have filed suit seeking declaration that the suit properties i.e. 454 kanal 3 marlas land, a house

at Ludhiana, a house at Chandigarh and a flat at Haridwar are joint Hindu family properties, which were acquired by Mohan Lal Jhanji (since

deceased) -father of defendant No. 1, as karta of joint Hindu family, being eldest male coparcener of the family comprising of his brothers, after

the death of their father Sham Lal Jhanji. The plaintiffs also sought declaration that defendant No. 1 has no right, title or interest to claim the

aforesaid property or any part being her properties or being individual or exclusive properties of her father Mohan Lal Jhanji and therefore,

defendant No. 1 has no right to alienate the same. Plaintiffs have also claimed permanent injunction restraining defendant No. 1 from alienating the

suit properties and from misappropriating the income thereof. Mesne profits have also been claimed from defendant No. 1.

3. The sum and substance of the case of the plaintiffs is that the plaintiffs and defendants No. 2 and 3 are brothers of Mohan Lal Jhanji (since

deceased), who was the eldest brother. There was 131/2 acres ancestral property and out of income thereof, Mohan Lal Jhanji purchased the suit

properties and therefore, the same are joint Hindu family properties.

4. Defendant No. 1 moved application for deleting certain parts of the plaint alleging the same to be irrelevant, scandalous etc. The said application

has been disposed of by the trial court by way of impugned order, thereby partially allowing the said application.

5. I have heard learned Counsel for the parties and perused the case file.

6. Words like "traitor", "meanness", "ruled the roost", "dominance" and "grabbing mentality" etc. have been ordered to be deleted. Paragraphs 7

and 8 and certain parts of paragraphs 9, 13 and 15 of the plaint have also been ordered to be deleted in addition to the offensive expressions

mentioned above.

7. Learned Counsel for the petitioners vehemently contended that the parts ordered to be deleted are very much relevant and necessary to prove

the case of the plaintiffs. It was contended that Trust was created by Mohan Lal Jhanji regarding some part of the suit properties. It is also alleged

mat purchase of some of the suit properties in the name of second wife of Mohan Lal Jhanji and in the name of his daughter is benami. It is also

contended by counsel for the petitioners that Mohan Lal Jhanji had no right to execute Will regarding the suit property because he has left behind

defendant No. 1 as his sole issue and defendant No. 1 is issueless and after her death, the suit property would revert to plaintiffs and defendants

No. 2 and 3 and other heirs of Mohan Lal Jhanji, in view of Sections 15(2) and 16 of the Hindu Succession Act, 1956.

8. Learned Counsel for the petitioners also referred to Section 52 of the Evidence Act and Order 6 Rule 16 of the CPC (in short - CPC), under

which the application was moved by defendant No. 1. Learned Counsel for the petitioners also referred to various judgments. Judgment in the

case of Harbhaj v. Mohar Singh and Ors. AIR 1967 Punjab 184 (V 54 C 45) relates to Section 15 of the Hindu Succession Act, 1956. Reliance

has also been placed on a judgment of Hon'ble Supreme Court in the case of Abdul Razak (D) through L. Rs. and Ors. v. Mangesh Rajaram

Wagle and Ors. 2010 (1) CCC 631 (S.C.). In that case, however, the High Court, exercising power under Article 227 of the Constitution of

India, had ordered striking off certain pleadings in the additional written statement, which had been disallowed by the trial court. The Supreme

Court did not approve the judgment of the High Court observing that power of High Court under Article 227 of the Constitution of India is limited

and not like that of appellate court. Judgment in the case of Binapani Paul v. Pratima Ghosh and Ors. 2007 (3) RAJ 7 pertains to benami

transaction. Other judgments namely Iqbal and Others Vs. His Holiness Dr. Syedna Mohamed Burhanuddin Saheb, , Preeti Parihar v. Mali

Sansthan 2000 (2) CCC 186 (Raj), Mrs. Minni Keer alias Mohinder Kaur Vs. Lt. Gen. Charan Jit Singh (Retd.) and Others, , Dhartipakar

Madan Lal Agarwal Vs. Rajiv Gandhi, , Roop Lal Sathi v. Nachhattar Singh AIR 1982 SC 1559, Km. Shradha Devi Vs. Krishna Chandra Pant

and Others, and P.D. Shamdasani Vs. The Central Bank of India Ltd. (No. 2), relate to interpretation of Order 6 Rule 16 CPC.

9. On the other hand, learned Counsel for the contesting respondent No. 1 vehemently contended that the portions of the plaint, which have been

ordered to be struck off by the trial court, are unnecessary, scandalous, frivolous and vexatious and would tend to prejudice, embarrass and delay

the fair trial of the suit. Learned Counsel for respondent No. 1 has relied on a judgment of Bombay High Court in the case of P.D. Shamdasani Vs.

The Central Bank of India Ltd. (No. 2), and a judgment of this Court in the case of Mrs. Minni Keer alias Mohinder Kaur Vs. Lt. Gen. Charan Jit

Singh (Retd.) and Others, .

10. I have carefully considered the rival contentions and perused the judgments cited at the bar by the counsel for the parties.

11. The ratio of law which emerges from the judgments is that the Court has to see in each case whether the offending pleading is required to be

struck off or not, depending upon the facts and circumstances of each case because it has to be determined in the facts and circumstances of each

case whether offending part of the pleadings, which is objected to, is unnecessary, scandalous, frivolous etc. or not. Order 6 Rule 16 CPC is

reproduced as under:

16. Striking out pleadings - The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading:

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.

12. Section 52 of the Evidence Act also provides that in civil cases, the fact that the character of any person concerned is such as to render

probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant. In the

instant case, use of offensive words like traitor etc. mentioned herein above is certainly scandalous and such expressions are frivolous and

vexatious and have no relevance whatsoever, to the claim of the plaintiffs. As noticed herein above, the basic firmament of the claim of the plaintiffs

is that Mohan Lal Jhanji acquired the suit properties from income derived out of 131/2 acres ancestral land and Mohan Lal Jhanji had no personal

income to acquire the suit properties. In view of this basic foundation of the plaintiffs' claim, the allegations in paragraphs 7 and 8 of the plaint, inter

alia alleging that Mohan Lal Jhanji was ghar jamai (resident son-in-law) and did not support his other paternal family members out of his income,

are completely irrelevant. It appears that the plaintiffs have made these allegations because certain acts or activities of Mohan Lal Jhanji or his first

or second wife were not to the liking of the plaintiffs. However, that would not make those allegations to be relevant to the claim of the plaintiffs.

However, the plaintiffs are entitled to retain the pleading in paragraph 7 of the plaint to the effect that Mohan Lal Jhanji had been spending his

income on the family of his in-laws and was therefore not left with any income to acquire the suit properties. Except to this extent, all other portions

of the plaint, which have been ordered to be deleted by the trial court, have been rightly ordered to be struck off because the same are completely

irrelevant, scandalous, frivolous and vexatious and the same relate to character

of Mohan Lal Jhanji, which is not relevant in view of Section 52 of the Evidence Act.

13. Reference to Sections 15(2) and 16 of the Hindu Succession Act, by learned Counsel for the petitioners, is completely out of context because

in the plaint, no Will allegedly executed by Mohan Lal Jhanji has been referred to or challenged.

14. For the reasons recorded herein above, the instant revision petition is dismissed except to the extent that pleading of the plaintiffs in paragraph

7 of the plaint to the effect that Mohan Lal Jhanji had been spending his income on the family of his in-laws and therefore had no personal income

to acquire the suit properties, shall be retained.