

(1990) 02 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1506 of 1987

Sumer Chand

APPELLANT

Vs

Ram Kishan Kaura and others

RESPONDENT

Date of Decision : 20-02-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, Order 7 Rule 16
Hindu Succession Act, 1956 — Section 14, 14(1)
Limitation Act, 1963 — Article 58, 65

Citation : AIR 1991 P&H 103

Hon'ble Judges : A.L. Bahri, J

Bench : Single Bench

Advocate : Mr. Jaswant Jain, for the Appellant; Mr. Ram Kishan Kaura, for the Respondent

Judgement

1. This appeal is by the defendant filed against the judgment and decree of the Additional District Judge, Kurukshetra, dated Dec. 16, 1986, whereby suit filed by Ram Kishan Kaura and others was partly decreed as regards tabala. Decree for possession was passed. However, the suit was dismissed regarding the shop. The trial Court had, however, dismissed the entire suit,

2. Ram Kishan Kaura plaintiff had also filed R.S.A. No. 1418 of 1987 which was dismissed in limine by D. V. Sehgal, J. on April, 1987. It is stated that SLP is pending in the Supreme Court against the said order.

3. For deciding the controversy arising in this appeal, only relevant facts are being noticed. The suit was brought by Ram Kishan Kaura, Harcharan Dass and his son Tejinder Kumar Kaura as members of the Hindu joint family known as M/s. Harcharan Dass and brothers. The relationship between the parties can only be appreciated from the following pedigree table. Shiv Dass had two sons; Amar Nath and Baij Nath. Ram Kishan, Harcharan Dass, Vidya Rani and Prem Sagar are the sons of Baij Nath. Amar Nath died in 1918 during the lifetime of Shiv Dass who died in 1935. Amar Nath left behind his widow Paramjot and a

daughter Krishna Devi. There was no partition of the joint Hindu family property. It was in 1958 that some settlement was arrived at whereby Smt. Paramjot was allowed to recover rent of the shop and to stay in the tabela. Subsequently, in October, 1958 Smt. Paramjot gifted the shop and the tabela to her daughter Krishna Devi. Paramjot died on May 6, 1972. Smt. Krishna Devi sold the shop and the tabela to Sumer Chand on June 21, 1973.

4. There was a tenant in the shop aforementioned who was earlier paying rent to Baij Nath. Some litigation was with the tenant on behalf of Harcharan Dass and thereafter by Ram Krishna Kaura for the recovery of the rent. In one of the litigations Sumer Chand was also impleaded as a party and in that case it was decided that gift deed and the sale-deed aforesaid were valid. This litigation came up to the High Court and the aforesaid findings were affirmed.

5. In the present suit declaration was claimed regarding the illegality of the gift deed and the sale-deed as the plaintiffs claimed to be owners. They also claimed possession of the shop as well as tabela. The plaintiffs also claimed that gift deed and the sale-deed aforesaid were prepared in connivance with the defendants Panna Lal and others and, therefore, they should be made liable to pay damages. The suit was contested by Sumer Chand inter alia alleging that Paramjot was the owner of the property in dispute and gift and the sale-deed aforesaid were valid. Other defendants also contested the suit. The trial proceeded on the following issues:--

- 1) Whether Paramjot had any transferable title in the impugned property of the Joint Hindu family?
- 2) Whether Paramjot was maintained by the joint Hindu family of M/s. Baij Nath and Harcharan Dass etc.?
- 3) Whether the gift deed dated 31-10-1958 is invalid?
- 4) Whether the sale deed dated 23-6-1973 is also invalid?
- 5) Whether the defendants Nos. 3, 4 and 6 have played the role of conspirators in the conversion of the impugned property?
- 6) Whether the defendants Nos. 1 and 5 are trespassers?
- 7) How and when the physical possession of the impugned property was acquired by defendant No. 5?
- 8) Whether the plaintiffs are entitled to compensatory costs?
- 9) Whether the suit is barred by Section 11, C.P.C.?
- 10) Whether the suit is not properly valued for purposes of court-fee and jurisdiction?
- 11) Whether the plaintiffs are estopped from filing the present suit?

12) Whether the plaintiffs have waived their right to file the suit?

13) Whether the suit is maintainable in the present form?

14) Whether the plaint is liable to be struck off under O. 7, R. 16, C.P.C.?

The trial Court held that principle of res judicata was attracted and the findings recorded in the previous case regarding validity of the gift and the sale would be binding on the parties. It was primarily on this ground that the suit was dismissed.

6. The lower appellate Court on the question of res judicata held that it was applicable qua the shop and not qua theabela and thus modified the judgment and decree of the trial Court decreeing the suit regarding theabela.

7. Respondent Ram Kishan, who has appeared in person, and argued the appeal, urged that the finding on the question of shop should be reviewed and this Court should give a finding that the gift and the sale qua the shop was also bad. He has further urged that further finding be also recorded that this gift and sale were made with connivance with other respondents and he has referred to the provisions of O.41, R. 33 of the CPC in this respect. I am afraid that in the peculiar circumstances of the case where appeal filed by Ram Kishan Kaura and others has already been dismissed, no relief under O. 41, R. 33 of the Code of Civil Procedure can be given to Ram Kishan Kaura" and others respondents. The matter is still before the Supreme Court as is argued and if Ram Kishan Kaura and others succeed there, they would get appropriate relief. As far as the present appeal is concerned, only two questions debated on behalf of the appellant are being adjudicated upon.

8. Another point can also be noticed. According to the counsel for the appellant as well as respondent No. 1, who has appeared in person, the gift deed and the sale deed should have been held to be legal or illegal as a whole. However, this contention, in the facts and circumstances of this case, cannot be accepted as the case of the plaintiff Ram Kishan Kaura, as stated above, has already failed qua the shop and the matter is pending in the Supreme Court. The contention of the counsel for (he appellant in this respect also cannot be accepted. The question has to be independently decided as to whether theabela in dispute is owned by the appellant or the respondent.

9. Since the question involved relates to interpretation of Sec. 14 of the Hindu Succession Act, it is necessary to refer the relevant evidence produced in this case. In the plaint itself in para 4(e) the case of the plaintiffs is that it was orally agreed in the meeting that as a provisional family arrangement to ensure domestic peace, Paramjot may receive monthly rent of the impugned shop from the tenant directly or through the Karta or any other member of the family as convenient to her and she could reside in theabela so that she could meet the expenses of her living till death. It is further mentioned that this was done with the intention to facilitate receipt of maintenance of the widow" Paramjot. PW 1

Ram Kishan also made statement to the same effect. As per his evidence up to 1957 Paramjot continued living with them. It was in March, 1958 that Paramjot visited them in Ismailabad where brotherhood (Panchayat) was collected and she stated that from the recovery of the rent of the house she would maintain herself. However, the Panchayat orally decided that Paramjot would get the rent of the shop and would live in the tabala in her lifetime. PW 5 Ram Pyari widow of Baij Nath also supported this case and stated that the decision was taken in the Panchayat that Paramjot would cook food in the tabala and would continue to get rent of the shop. At this stage, it may be stated that earlier rent of the shop was being collected by Baij Nath and others. The question for consideration is as to whether Paramjot was in possession of the tabala on June 14, 1956 when the Hindu Succession Act came into force and if not whether getting possession of the shop afterwards she should be held to be owner thereof. Section 14(1) of the Hindu Succession Act reads as under:--

" 14(1). Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.-- In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance of devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act."

10. The contention of the counsel for the appellant is that though Paramjot was not in possession of the tabala on the day the Hindu Succession Act came into force, however, she acquired it in 1958 under the devise as mentioned above, she would be full owner and not a limited owner. It is further in this context that it has been argued that this devise as aforesaid of acquiring the property was in lieu of maintenance. This contention cannot be accepted. Section 14(1) referred to above is in two parts. As far as first part is concerned, it is necessary that the female should be in possession of the property on the day the Hindu Succession Act came into force. It is the acquisition of the property which may be before the enforcement of the said Act or thereafter which is in the second part of the Section. If the female was not in possession of the property, the second part will not be attracted. This was so held by the Supreme Court in *Daya Singh (Dead) through Lrs. and Another Vs. Dhan Kaur*, . In that case the property belonged to Wadhawa Singh, who died in 1933 leaving behind his widow. She gifted the property in favour of her daughter in April, 1933. This was challenged by the reversioners successfully. After enforcement of the Hindu Succession Act, the widow again made a gift of the same land and she died in 1963. It was in such premises it was held that since widow was not in possession of the property on the day the Hindu Succession Act came into force, she did not become the full

owner and the subsequent gift was, therefore, bad in law. In this view of the matter, Paramjot cannot be held to be owner of theabela which was gifted by her to Krishna Devi and subsequently sold by her to Sumer Chand.

11. Learned Counsel for the appellant has also argued that the present suit was barred by time. Although this question was not raised in the trial Court or in the grounds of appeal, since question of law only was involved, I have heard the responde"nt on this point. According to the learned Counsel for the appellant the suit should have been brought within three years from the date of gift or the sale. Reference has been made to Art. 58 of the Limitation Act. Article 58 provides limitation of three years for obtaining any declaration when the right first accrues. The present is not only a suit for declaring the gift deed and the sale as invalid, the present is also a suit for possession on the basis of title as the plaintiffs claim to be owners of the property in dispute and that Paramjot was not competent to make the gift of the same. The suit filed by the owner on the basis of the title for possession would always be. within time as far as trespassers are concerned unless they establish their adverse possession within 12 years as provided under Art. 65 of the Limitation Act. A specific finding was recorded on issue No. 6 by the lower appellate Court that defendant Sumer Chand entered into possession of theabela as well as the shop in April, 1981 which has not been challenged in this appeal. It is held therein that though for some time Paramjot resided in theabela and it was also let out for few months, the roof of the same fell down and the possession reverted to the Joint Hindu family and it was only in April, 1981 that actual possession was taken by Sumer Chand. The suit is, therefore, obviously within time as filed on June 5, 1985. This contention of the counsel for the appellant is repelled.

12. For the reasons recorded above, this appeal is dismissed with no order as to costs.

13. Appeal dismissed.