Suresh Chand Vs Sunder Lal and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 7, 2013

Citation: (2013) 171 PLR 212

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Gorakh Nath, for the Appellant;

Final Decision: Dismissed

Judgement

K. Kannan, J.
The suit is for declaration that the suit items are ancestral properties and that the decrees obtained by the respective

plaintiffs in two suits in CS No. 779 of 1985 and CS No. 138 of 1988 are void illegal and not binding on the plaintiff. Strangely for the plaintiff, he

did not file judgments in both the suits. Incidentally CS No. 779 of 1985 was a suit filed by the plaintiffs father Tara Chand against the first

defendant and the plaintiff was trying to contend that a decree obtained in the presence of the father was not binding on him. The suit in CS No.

138 of 1988 was suit instituted by the second defendant who was the son of the first defendant Sunder Lal and in that also a compromise has been

effected. The plaintiff cannot have a relief in the judgment and decree without even filing respective judgments and the contention that the decrees

were not binding and the decree obtained in the presence of father from whom the plaintiff had not divided himself shall bind him and the relief

cannot be in the manner sought unless he showed the father had in some way acted against the interest of the son. The prayer sought for was not

possible. In this case the plaintiff was trying to rely on the fact that even the first defendant had contended that the decree obtained in a

compromise in CS No. 779 of 1985 was not valid. This was by way of counter claim. The procedure adopted by way of counter claim was

untenable and impermissible. The counter claim shall be possible only by defendant against the plaintiff and it cannot be directed by one defendant

against another co-defendant and the Court had not provided for any relief for the counter claim.

2. The plaintiffs further contention was that the contentions in the plaint were that the first defendant had inherited the ancestral properties and the

business which he was running was also ancestral. The properties in item Nos. 2 and 3 were admittedly the properties purchased in the name of

the first defendant. The first defendant"s contention was that he had established his own shop from a property which had been vacated by a person

who had migrated to Pakistan and he was carrying on his business in Pansari Gali and acquisitions were his own properties. From the mere

inheritance of a haveli, non-income earning by nature with no income yielding nucleus, there could be no presumption that acquisition in the name of

any member of the family belonged also to joint family. The presumption in law is that a family remains joint but there is no presumption that the

property acquired by any member of the family belonged to the family. On the other hand, the burden to prove the same lies on the person who

asserts that the property belongs to the joint family and the legal presumption has been properly adverted to by the Court below.

3. Learned counsel for the appellant wants to contend that there is an admission that items Nos. 1 and 4 are ancestral and admitted so by the

defendant. The sale which has been effected pertains only to items Nos. 2 and 3 and there is no sale in respect of items Nos. 1 and 4. A

declaration that items Nos. 1 and 4 are ancestral is not even necessary in view of the admission made and there cannot be any relief against

alienation of an ancestral property. The suit is filed at the time when the father is still alive and any junior member can ask for a restraint only if the

member does not want to remain in joint status. If the plaintiff has an apprehension that any senior member of the family indulges in reckless acts of

alienation which have portents of reckless dissipation of ancestral properties, the relief would lie in seeking for partition and not for a relief of

injunction. In a suit for partition, a relief of injunction as an interim measure may be possible. A relief of permanent injunction against alienation will

cause a fetter to the recognized power of the Karta or a member of the family to sell his own share in the property or sell the share interest in joint

family property which is for a purpose recognized as for necessity or for benefit. A Court cannot grant a relief of permanent injunction against a

member of joint family from selling joint family property as a permanent measure. The plaintiff, if so advised, may resort to his own action for

partition on item Nos. 1 and 4 only, which are admittedly ancestral. The decision of the Court below is in conformity to law and I find that there is

no substantial question of law which is to be addressed. The regular second appeal is dismissed.