(1997) 116 PLR 393

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2344 of 1988

Dhanno and Others		APPELLANT
	Vs	
Hari Ram and Another		RESPONDENT

Date of Decision: Aug. 28, 1996

Acts Referred:

- Limitation Act, 1963 - Article 58
- Punjab Tenancy Act, 1887 - Section 59

Citation: (1997) 116 PLR 393

Hon'ble Judges: N.K. Kapoor, J

Bench: Single Bench

Advocate: V.K. Jain and Raman Sharma and M.L. Malhotra, for the Appellant; C.B. Goel, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Kapoor, J.
It is defendant"s regular second appeal against the judgment and decree of the Additional District Judge whereby the appeal filed by the plaintiffs was accepted, thus decreeing the suit of the plaintiffs as prayed for.

2. Briefly put, one Dasondi son of Tota was the occupancy tenant. On his death, the land was inherited by his four sons, namely, Punnu, Gainda, Krishna and Hari Ram in equal shares which finds mention in the copy of jamabandi for the year 1934-35. Smt. Dhanno was married to Punnu. Punnu died 40 years back and after his death Smt. Dhanno contracted "Karewa" marriage with Gainda. According to the plaintiffs Smt. Dhanno by marrying Gainda forfeited all her rights in the property of Punnu and so this way three brothers, namely, Krishna, Gainda, and Hari Ram succeeded to estate left by Sh. Dasondi in equal shares i.e. l/3rd share each, as occupancy tenant and subsequently on coming into enforcement of Punjab Occupancy Tenants (Vesting of Proprietory Rights) Act, 1953 (for short "the Act") they, became owners of the property and have been

cultivating and still cultivating and so entries in the revenue, record showing Smt. Dhanno to be owner of l/20th share being widow of Gainda and l/4th share being widow of Punnu are liable to be corrected.

3. Defendants resisted the claim set up by the plaintiffs. They raised few preliminary objections, namely that the plaintiffs have no locus standi to file and maintain the present suit, that the suit is not within time; that the suit is bad for mis-joinder of parties; that the relief is vague and indefinite; and that the plaintiffs are estopped from filing the present suit. On merit, it has been stated by the contesting defendants that it is wrong to suggest that after the death of Punnu, defendant No. 1 contracted any Karewa marriage with Gainda. In fact, defendant No. 1 was his mistress. So after the enforcement of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 she became full owner and thereafter on account of death of Gainda, defendant No. 1 being widow of Gainda have right to succeed to the estate left by Gainda.

4. On the pleadings of the parties, following issues were framed :-

1. Whether the plaintiffs are owners in possession of 2/3rd share i.e. 1/3 share each in the suit land ? OPP

2. Whether defendant No. 1 contracted "Karewa" with Sh. Gainda after the death of Sh. Punnu, if so, what is its effect ? OPP.

3. Whether the plaintiffs have no locus standi to file the present suit ? OPD.

4. Whether the suit is time barred ? OPD.

5. Whether the suit is bad for mis-joinder of parties and causes of action ? OPD.

6. Whether the relief is vague and indefinite OPD.

7. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct ? OPD.

8. Relief.

The trial court took up issues No. 1 and 2 together and after discussing the oral as well as a documentary evidence decided both these issues against the plaintiffs. Issue No. 3 was not pressed at the time of arguments and so was decided against the defendants. Under Issue No. 4, the Court held that the suit has been filed beyond the period of limitation prescribed under the Limitation Act. Issue Nos. 5 and 7 were not pressed and so these were decided accordingly. Under issue No. 6 the court held that the suit is vague and indefinite and hence not maintainable in the present form.

Resultantly, the suit of the plaintiffs was dismissed.

5. The lower appellate Court once again examined the matter on facts as well as on law. Primarily, counsel for the appellants assailed the findings of the trial court in respect of issues No. 1, 2 and 4. The lower appellate court on reconsidering the matter came to the conclusion that after the death of Punnu, Smt. Dhanno married Gainda (Karewa marriage) and gave birth to four children, namely Kura, Jai Bhagwan, Champa and Sita. The court further came to the conclusion that Champa was of 43 years; Kura Ram was of 40 years of age; Sita Devi was 28-29 years; and Jai Bhagwan to be 36-37 years old. Keeping in view the approximate date of birth of children born out of cohabitation of Dhanno with Gainda, the court came to the conclusion that Smt. Dhanno married Gainda some time in the year 1943. On account of this categorical conclusion arrived at after scrutinizing the statements of the witnesses, the court brushed aside document Exhibit DX registered mortgage deed dated 7.9.1954 stated to have been executed by Gainda and Smt. Dhanno wherein she has been described to be widow of Punnu though witnessed by both the plaintiffs. Accordingly it was held that on remarrying Gainda, she forfeited her right of inheritance to the property of Punnu. This way, it was held that each one of the plaintiffs is entitled to l/3rd share in the joint holding. Findings in respect of issues No. 1 and 2 were reversed. Under issue No. 4, the Court held that as per revenue record, plaintiffs as well as defendants have been shown to be owners as per share mentioned but the total land is shown to be in joint cultivating possession; and as per entries in the copies of Kitasra Girdawari shows the land to be in joint cultivating possession, no inference of adverse possession could be made out. So finding on issue No. 4 was also reversed.

Accordingly, the appeal was accepted thus decreeing the suit of the plaintiffs as prayed for.

6. Counsel for the appellants has termed the findings of the lower appellate court to be wholly unwarranted on facts as well as on law. According to the counsel, the lower appellate Court has erred in law in not properly considering the oral as well as documentary evidence on record. In fact, evidence has been misread which has consequently resulted in passing of impugned judgment and decree by the lower appellate Court. Elaborating, the counsel argued that Smt. Dhanno was married to Punnu prior to the year 1939 when he died. Mutation Exhibit P-5 was sanctioned in favour of Smt. Dhanno in the year 1939 and ever since then she continued to be recorded in possession in the revenue record. On coming into enforcement of Punjab Occupancy Tenants (Vesting of Proprietory Rights) Act, 1953, Smt. Dhanno being widow of Punnu became owner of the property. Thus this became her self acquired property and so cannot be divested as now ordered by the lower appellate court.

7. According to the counsel for the appellants, lower appellate Court has also erred in law in ignoring the admission of the plaintiffs as contained in mortgage deed Exhibit DX executed in the year 1954. Plaintiffs are the attesting witnesses to this document and in this document Smt. Dhanno is recorded to be the widow of Punnu deceased. Since this fact was admitted by the plaintiffs, at least upto the year 1954 by which time she had

become full owner of the property. The present suit is not only barred by limitation but also not maintainable as plaintiffs have no right to title in the property inherited by Smt. Dhanno as widow of Punnu. The Court has erred in coming to the conclusion that Smt. Dhanno entered into a Karewa marriage sometime in the year 1943. Fixing of the year of Karewa marriage as conjectural.

In support of the aforesaid submission, counsel for the appellants placed reliance upon the judgments reported as Faquiria and Ors. v. Mst. Rajo (1956) 58 PLR 194; Chuni Lal Dwarka Nath Vs. Hartford Fire Insurance Co. Ltd. and Another, ; Bachan Singh etc. v. Prithvi Singh etc. 1975 CLJ 242; Sat Pal v. Abdul Havi (1948) 50 P.L.R. 194 ; Munsha Singh Sunder Singh v. Gurdit Singh, AIR 1965 Punjab 80; and Sewti Devi Vs. Kanti Parshad and Others, .

8. Counsel for the respondents, on the other hand, argued that the lower appellate Courts on careful perusal of oral as well as documentary evidence adduced by the parties has come to the conclusion that on the death of Punnu, Smt. Dhanno married Sh. Gainda sometimes in or around the year 1943 and thereafter gave birth to as many as four children. Ages of the children also indicate, that Smt. Dhanno married Gainda soon after of the death of Punnu. This being essentially a finding fact is not amenable for reappraisal u/s 100 of the Code of Civil Procedure. Otherwise too, rights of the parties flow from Sh. Dasondhi who admittedly was an occupancy tenant. As per section 59 of the Punjab Tenancy Act, on the death of Dashondi in the line of male descendants i.e. Kishna, Hari Ram, Gainda and Punnu succeeded to his estate. On the death of widow or in case she remarries or abandons the land, the tenancy rights revert to the male lineal descendants. Smt. Dhanno ceased to have any right on her remarrying (Kareva marriage) Gainda. This way plaintiffs as well as Gainda succeeded as occupancy tenants to the extent of l/3rd share each and thus became owner of l/3rd share each on coming into enforcement of the Punjab Occupancy Tenants (Vesting of Proprietory Rights) Act, 1953. According to the counsel, Smt. Dhanno and Gainda remained together under a roof as husband and wife for a pretty long time i.e. more than 20 years till Gainda died in 1956 and gave birth to four children and so the Court below drew an inference that Smt. Dhanno remarried Gainda after the death of Punnu. The plea of the defendants that Smt. Dhanno has been living as mistress has rightly been discarded in view of the unimpeachable evidence proving a valid marriage. The counsel placed reliance upon the judgment of the apex court reported as Ranganath Parmeshar Panditrao Mali and Anr v. Eknath Gajanan Kulkami and Anr. 1996 (1) LJR 407.

9. As regards the attestation of the mortgage deed, the counsel argued that the attesting witness to a registered deed is never taken to have known the contents of the document. Reliance was placed upon the judgment reported as Pandurang Krishnaji v. Markandeya Takaram and Ors. AIR 1922 PC 20; and Siraj-Ud-Din v. Mt. Rahiman and Ors. AIR 1936 Lah. 978.

10. As regards the plea raised by !he appellants that the suit is barred by limitation, the counsel argued that the plaintiffs have remained in cultivating possession of the suit property and so mere attestation of mutation or some entry in the revenue record regarding the share of the party does not bar the plaintiffs from getting the entries corrected as and when their rights are challenged. Counsel placed reliance on the judgment reported as Ibrahim alias Dharam Vir v. Smt. Sharifan alias Shanti 1979 PLJ 469.

11. I have heard learned counsel for the parties as well as perused the documents referred to by them and the statements of few witnesses reference to which was made by the learned counsel for the appellants during his arguments. Broad facts are not in dispute i.e. Dashondhi being an occupancy tenant and on his death in the year 1934 rights devolved upon Kishna, Punnu, Gainda and Hari Ram, his sons. The factum of death of Punnu is also not in dispute. He died in the year 1938. Admittedly, Dhanno was widow of Punnu and so her name was reflected in the revenue record. The precise dispute between the parties is thereafter. According to the plaintiffs, Smt. Dhanno contracted Karewa marriage with Gainda and gave birth to four children (two sons and two daughters). Their ages are in between 30 to 40 years. If these children were born on cohabitation of Smt. Dhanno with Gainda, the necessary inference would be that Smt Dhanno is legally wedded wife of Gainda. However, the appellants have contested this conclusion of the Court below on the ground that as per document Exhibit DX mortgage deed dated 7.9.1954 Smt. Dhanno is shown to be the widow of Punnu and this document is attested by both the plaintiffs. So till 1954 her status was that of widow of Punnu. Since by that time she has become full owner of property, she cannot be divested of her right on the pleas raised by the plaintiffs. The lower appellate court on carefully perusing the evidence led by the parties and especially keeping in view the ages of children of Smt. Dhanno and Gainda, has come to the conclusion that she married Gainda sometime in the year 1943. This conclusion has been arrived at on preponderance of evidence. Such a conclusion cannot be termed to be unwarranted. The apex Court in Ranganath Parmeshwar Panditrao Mali"s case (supra) has held that in case a mate and female live together for long years as husband and wife then there is a presumption of legal marriage between the two. No doubt, presumption is rebuttable but in the context of the present case, no such material has been placed on record and only reliance has been placed upon document Exhibit DX mortgage deed. No doubt, in the mortgage deed Exhibit DX, both the plaintiffs are attesting witnesses. But as per decision in Pandurang Krishnaji"s case (supra), the same conveys neither directly or by implication any knowledge of the contents of the document. Similarly, in Siraj Ud Din"s case (supra) the court held that mere fact that a person signs the document as an attesting witness does not establish that he was aware of their contents. The burden of proving that he had such knowledge and was a consenting party to the transactions embodied in them lies upon the parties who rely upon these documents.

12. Counsel for the appellants next argued that even if it be taken that Smt. Dhanno married Gainda but precise date i.e. year and the month when marriage took place has not been proved on the record and so there cannot be any presumption with regard to the exact date and time when marriage took lace. Support was sought from the provisions of Section 108 of the Indian Evidence Act.

13. Reliance upon Section 108 of the Indian Evidence Act is wholly misplaced. This section deals with burden of proving as to whether a person is alive who has not been heard of for seven years. In view of the fact that Smt. Dhanno is stated to have married Gainda sometime in the year 1943, she automatically stand divested of her right in the land on account of section 59 of the Punjab Tenancy Act. This way the plaintiffs along with Punnu became owners of the extent of l/3rd share in the joint holding. Admittedly, the land has remained in cultivating possession of the plaintiffs as well as defendants and so the mere entries in the revenue record specifying certain shares do not cast any doubt on their valuable right and the plaintiffs are well within their right to seek correction of these revenue entries in the register of mutation etc. as and when an attempt is made to dispossess them. Thus, cause of action arises in such like cases when the defendant/defendants threaten the plaintiffs to take forcible possession of the land from him. Mere entry of mutation in the name of defendant does not furnish any cause of action to the plaintiffs. This precise point came up for consideration in Ibrahim''s case supra) and the Court after considering the provisions contained in Article 58 of the Limitation Act held that the use of word ''first'' in Article 58 is of no significance at all and so the plaintiff can file suit as and when a cloud has been cast on the title of the plaintiff. Reliance was placed on the earlier decision of the Division Bench in the case reported as Niamat Singh v. Darbari Singh etc. (1956) 58 PLR 461 wherein it was held as under:-

''If an adverse entry is made against a person who is in actual physical possession of the property and if he continues to retain possession of the said property despite this entry in the revenue papers he is under no obligation to bring a suit.

If, however, his rights are actually jeopardised by the actions or assertions of the defendant, then he must take proceedings within six years from the date of such actions or assertions. In other words, the time begins to run not from the date on which an adverse entry is made but from the date on which there is a fresh denial of the plaintiff rights.''

Counsel for the appellants, however, in support of the contentions placed reliance upon the Division Bench decision of this Court in Smt. Sewti Devi''s case (supra). The aforesaid decision has no applicability on the facts of the present case. In that case the plaintiff admitted the claim of the defendant and so it was held that after a gap of so many years the plaintiff is estopped from changing his position. The Court noticed the following facts: -

"In the present case, it is nowhere stated that Sant Lal was not aware of his rights to inherit the estate of Baru after the death of his widow Smt. Raji to the exclusion of Smt. Daropadi and that the plaintiffs also did not become aware of that position till they filed the suit. It is significant to note that even in 1961 they accepted that Smt. Sewti was entitled to one-half share of the produce of the land received from the tenants and chakotadars in the course of the suit before the Revenue Court for rendition of accounts. The cause of action in the present case had arisen to Sant Lal on the death of Smt. Raji and from that date the suit was clearly barred by time even on the decision in Niamat Singh"s case 1956 P&H 230 on which grant reliance has been placed."

Accordingly, I am of the view that the lower appellate Court rightly held the suit to be within limitation.

No other point has been pressed or claimed. Resultantly, finding no merit in the present appeal, the same is dismisses. No order as to costs.