Lal Singh and Others Vs Surjit Kaur

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 12, 2005

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 100
Evidence Act, 1872 â€" Section 42

Citation: (2006) 143 PLR 242 : (2005) 4 RCR(Civil) 719

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: Tribhawan Singla, for the Appellant; Pawan Sharma and D.D. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Kumar, J.
This is defendant''s appeal filed u/s 100 of the Code of Civil Procedure, 1908 challenging concurrent findings of fact

recorded by both the Courts below holding that in earlier litigation in respect of the property in dispute in the present proceedings it was held that

the defendant-appellant was not adopted by Inder Singh who was admittedly the owner of the suit property. It was further found that the afore-

mentioned Inder Singh did not execute any valid will in favour of the defendant-appellant bequeathing his property including the property in dispute.

The plaintiff-respondent has produced a copy of the judgment dated 17.1.1992 in C.A.No. 1 of 1987 Ex.PA/1. In the afore-mentioned

proceedings there were three specific issues raised before the learned Civil Judge, Barnala which were as under:

1. Whether plaintiff No. 1 Lal Singh is in possession of 1/4 share in the land in dispute on the basis of the sale-deed dated 19.6.1984 executed in

his favour by Inder Singh? OPP.

2. Whether Lal Singh is in possession of 1/2 share of the land as mortgagee? OPP

3. Whether Inder Singh deceased executed a valid will dated 19.6.1984 of his property in favour of plaintiff? OPP

2. All the aforementioned issues were decided against the defendant-appellant and the findings were affirmed by the lower appellate Court vide

judgment Ex.P1/A. No further appeal was disclosed to have been filed by the defendant-appellant which led to the presumption by the Courts

below that the judgment dated 17 1.1992 Ex.Pl/A had attained finality. The afore-mentioned judgment has been held to be relevant u/s 42 of the

Indian Evidence Act, 1872. Further reliance has also been placed on a copy of the voters list Ex.P-3 for the year 1993 in respect of village

Mulowal. The name of the defendant-appellant figures in that list. The afore-mentioned factual position has also been conceded by the defendant-

appellant that earlier to 1999 he used to reside at village Mulowal. The afore-mentioned evidence would lead to the conclusion that the defendant-

appellant was not adopted by Inder Singh nor he ever lived with Inder Singh since his childhood.

3. Learned appellate Court has also held that best piece of evidence namely copy of the Will allegedly executed by Inder Singh in favour of

defendant-appellant and copy of the civil suit earlier filed by him in respect of the property of Inder Singh have been withheld by the defendant-

appellate and on the basis of the judgment of the Supreme Court in the case of Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, , it

has held that withholding the best piece of evidence would lead to an adverse against such a party notwithstanding that onus to prove did not lie on

him.

4. Both the Courts below further went on to hold that the site plan prepared by the plaintiff-respondent by visiting the spot would not be

considered as a proof of title yet it would support and corroborate the statements made by other witnesses of the plaintiff-respondents that she has

been residing in the village.

5. Having heard the learned Counsel and perusing the view taken by the two courts below I am of the considered view that no interference of this

Court would be warranted, it has been concurrently found that in the earlier litigation defendant-respondent has failed to prove that he was the

adopted son of Inder Singh, the original owner of the property or that Inder Singh had executed a Will in his favour. It is well settled that a

judgment and decree passed in an earlier litigation in respect of the same property although not inter-parties would be relevant to determine the

question raised in the later dispute albeit between the different parties. This question has been considered by the Supreme Court in the case of

Sahu Madho Das and Others Vs. Mukand Ram and Another, . In that case, Supreme Court accepted the interpretation given to a will by the Privy

Council although the proceedings before the Privy Council were not between the same parties. The views of their Lordship are discernible from

para 24 of the report, which reads as under:

(24) Now to go back to the year 1864 when Mst. Pato made the so-called will of 1864. This document was construed by the Privy Council in

Mst. Hardei v. Bhagwan Singh AIR 1919 P.C. 27(A) and their Lordships said-

In the events which happened this document did not become operative, but it is relevant as showing that at the date of its execution Pato was

claiming and absolute right to dispose of the whole of the scheduled property.

Mukand Ram was not a party to that litigation and the decision does not bind him but it operates as a judicial precedent about the construction of

that document, a precedent with which we respectfully agreed. She says that the property ""belongs exclusively to me without the participation of

anyone else."" That assertion, coupled with the fact that she purported to dispose of the property after her death (which she could not have done as

a limited owner), and taken in conjunction with the subsequent conduct of the daughters and that of the grandsons, imports admissions by them that

was her claim and leaves us in little doubt about what she meant. We, therefore, reach the same conclusion as the judicial committee and hold that

Ms. Pato claimed an absolute estate in 1864.

The afore-mentioned observation of the Supreme Court would show that if the same document is required to be considered by the Court in a

subsequent proceeding on which already judicial opinion is available then the judicial opinion shall be relevant fact on the principle of judicial

precedent. In the case of Virupakshayya Shandarayya Vs. Neelakanta Shivacharya Pattadadevaru, , a decision of the Privy Council was

considered relevant with regard to nomination and installation as mathadhipati. The Supreme Court reversed the judgment of the Karnataka High

Court which had taken a contrary view. Their Lordships of the Supreme Court observed as under:

9. In the aforesaid premises, the judgment of the Privy Council, even though the same did not bind the plaintiff on the principle of res judicata, was

definitely a relevant circumstance to be taken note of, because of what has been stated in Section 42 of the Evidence Act. What we, however, find

is that the High Court had only referred to the earlier decision without examining the question as to whether law permitted a contrary view to be

taken on the self same issue. According to us, the issue having been finally determined at the highest level, the same could not have been re-

examined, which exercise, to start with, was undertaken even by a Civil Judge.

The question has also been considered by the Supreme Court in the case of Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah, .

6. Apart from the afore-mentioned legal proposition, the judgment has to be considered relevant u/s 42 of the Evidence Act, 1872. Moreover,

there is sufficient oral evidence on record which has been believed by both the Courts below in the form of statement of Draftsman PW-1, Rup

Singh, Member Panchayat, PW-2, plaintiff-respondent PW-3, Ex.Pl, Site Plan and Saudagar Singh PW-4 who have supported the version of the

plaintiff-respondent. It cannot be concluded that the findings could be regarded as based on no evidence. It can also not be concluded that any

vital piece of documentary evidence or admission has been excluded from consideration. The jurisdiction of this Court u/s 100 of the Code cannot

be exercised in these circumstances. Therefore, the appeal is wholly misconceived and is liable to be dismissed.

For the reasons stated above, this appeal fails and the same is dismissed.