(2003) 05 P&H CK 0073

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3697 of 1999

Maghar Singh		APPELLANT
	Vs	
Gurmel Singh and Others		RESPONDENT

Date of Decision: May 3, 2003

Acts Referred:

- Registration Act, 1908 - Section 17

Citation: (2003) 3 CivCC 96 : (2003) 135 PLR 636 : (2003) 3 RCR(Civil) 546

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

Bench: Single Bench

Advocate: M.L. Saggar, for the Appellant; Harpreet Kaur Dhillon, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

This is plaintiffs second-appeal filed u/s 100 of the Code of Civil Procedure, 1908 challenging the judgment and decree dated 22.7.1999 passed by the Additional District Judge, Bamala dismissing his suit for declaration to the effect that he alongwith defendant-respondent 1 are owners in possession of the suit land vide family settlement effected between the parties. Further prayer for consequential relief of permanent injunction restraining defendant-respondents 2 to 6 from alienating the suit property to any other person was also declined.

2. In brief the case of the plaintiff-appellant is that his father Bachan Singh since deceased was owner in possession of the suit land. The aforementioned Bachan Singh was also father of defendant-respondents 1 to 5 and the husband of defendant-respondent 6. On the basis of family settlement, it is claimed by the plaintiff-appellant that the suit property was given to him and to defendant-respondent 1 as the same was ancestral in character. The memorandum of family settlement is alleged to have been scribed before the Panchayat but it was not given effect in the revenue record. It is further alleged that Bachan Singh

deceased by taking advantage of this fact made an attempt to alienate the suit land during his life time and after his death defendant-respondents 2 to 6 had been trying to alienate the same. It is further claimed that the plaintiff-appellant and defendant-respondent I are owners in respect of their shares and defendant-respondents 2 to 6 have no right to the suit property. In these circumstances, a declaration was sought along with consequential relief of permanent injunction restraining defendant-respondents 2 to 6 from alienating the suit property to any other. The relationship of plaintiff-appellant and defendant-respondent I with Bachan Singh deceased was admitted. However, it was denied that Bachan Singh deceased had given the suit property in a family settlement to the plaintiff-appellant or defendant-respondent 1. Defendant-respondents 2 to 6 further alleged that the suit property was self acquired property of Bachan Singh deceased and he had executed a registered will on 3.10.1991 in favour of the plaintiff-appellant and the defendant-respondent. Accordingly they are owners in possession of the suit property in equal shares.

3. The trial Court on issue No. 1-A has held that the plaintiff-appellant is entitled to get 1/28th share out of the coparcenary property as he was entitled to get 1/7th share out of 1/4th share of Bachan Singh the predecessor-in-interest. The remaining property was to remain Joint between the parties. These findings were recorded after holding that the suit property was the self acquired property inherited by Bachan Singh deceased from Likal Singh. "therefore, his share in coparcenary property is liable to succession as per the provisions of Section 6 of the Hindu Succession Act, 1954.

4. On appeal filed by the defendant-respondents, the learned Additional District Judge did not agree with the findings recorded by the trial Court that the property in dispute was coparcenary property and recorded the following findings :-

"Trial Court while deciding the case, has decided the inheritance of Bachan Singh treating some portion of the property to be coparcenary property and some portion as to be not coparcenary property. There had been ho pleading on behalf of the plaintiff, in fact, plaintiff continued claiming his right on the land on the basis of family settlement. If the pleading of the plaintiff is relied, then there would be no joint family or joint hindu family or coparcenary property between plaintiff, Bachan Singh, now deceased and Gurmail Singh son, who was originally defendant No. 2 and is now defendant No. 1. The case of the plaintiff remained based on that document. Trial Court as such, was not justified in deciding that some of the property is ancestral and some is not ancestral and then treating Bachan Singh to be coparcenar and then making notional partition at the time of death of Bachan Singh and allotting 1/4th share to Bachan Singh out of the coparcenary property and then giving that share to the plaintiff and the defendants being by virtue of Will. In deciding this, trial court had travelled beyond the pleadings. Merely writing a line in the pleadings that property in suit was ancestral property, will not mean that the

trial Court was to presume joint Hindu family between the parties and then decide the share treating the existence of Joint Hindu family. Plaintiff had not claimed that there was any Joint Hindu family or property was coparcenary property.

It has also come out that after the death of Bachan Singh, his inheritance had been sanctioned in favour of the plaintiff and the defendants being sons, daughters and widow of Bachan Singh, Bachan Singh had also executed a Will Ex.D1 dated 3.10.1991 in favour of all his heirs. The mutation was not challenged nor in fact inheritance of Bachan Singh was in dispute.

Once the court had held that there was no family settlement as alleged by the plaintiff or the document showing that family settlement could not be looked into and when the plaintiff had continued claiming relief on the basis of the documents of family settlement, then there would have been no alternative except to dismiss the suit of the plaintiff."

5. Mr. M.L. Saggar, learned counsel for the plaintiff-appellant has argued that the basis of reversing the finding on Issue No. 1-A by the lower appellate Court is that there was no pleading with regard to the character of the property. The learned counsel maintained that as specific issue was framed for the purposes of recording finding as to whether the suit land was ancestral and coparcenary property of the plaintiff-appellant and defendant-respondent No. 1 qua Bachan Singh. Accordingly, evidence has been led by the parties on the aforementioned issues and it is contended that the parties were fully aware about the controversy raised. The learned counsel further argued that The property inherited by Bachan Singh has been rightly held to be coparcenary by the learned trial Court and the property inherited by Bachan Singh from Likel Singh was self-acquired property in the hands of Bachan Singh, therefore the property held as ancestral and coparcenary property, has been rightly given by the trial Court on the basis of Section 6 of the Hindu Succession Act, 1956. It is on that basis that the plaintiff was held entitled to 1/28th share out of coparcenary property as he was to get 1/7th share out of 1/4th share of the remaining property of Bachan Singh. According to the learned counsel, under Order 14 Rule 5, the Court can frame issue at any stage for adjudication of disputes between the parties and an additional issue was framed on 22.3.1994 regarding the coparcenary and ancestral character of the property because Bachan Singh had died during the pendency of the suit and the question of his succession became open.

6. Ms. Harpreet Kaur Dhillon, learned counsel for the defendant-respondents has argued that the findings of both the Courts below on the family settlement cannot be assailed because the photostat copy of the document Mark ''A1 had not been proved by producing evidence not it could be exhibited. The aforementioned document is also undated. According to the learned counsel, this document is also undated. According to the learned counsel, this document is merely a partition deed rather than a family settlement. Therefore, no reliance on the aforementioned document can be placed nor any oral evidence u/s 92 of the Indian Evidence Act,

1872 (for brevity, 1872 Act'') could be adduced. The learned counsel further pointed out that primary reliance placed by the plaintiff-appellant was on family settlement and there are no averments in the plaint filed by the plaintiff-appellant claiming that some portion of the property was coparcenary. Therefore, the findings recorded by the learned Additional District Judge do not suffer from any legal infirmity.

7. After hearing the learned counsel for the parties and perusing the record, I do not feel persuaded to take a different view than the one taken by the learned lower appellate Court because it is well-settled that no amount of evidence could be a substitute to the pleadings which are the foundation to build up a case. In the pleadings, necessary and material facts constituting substantive rights claimed and liabilities assumed by the parties must be incorporated. No amount of evidence would be a substitute for pleadings concerning substantive rights and liabilities. In this regard, reliance can be placed on a judgment of the Supreme Court in the case of Dr. Ashok Kumar Maheshwari Vs. State of U.P. and Another, , In that case, the doctrine of promissory estoppel was invoked but the plea was repelled on the ground that there were inadequate pleadings. A Constitution Bench in the case of H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, has laid down that a concised statement of material facts is necessary for the petitioner to plead and corresponding reply on behalf of the respondent because it enables the parties to formulate their case in preparation of the hearing beside giving fair notice of the case of either side. The view of the Constitution Bench in this regard read as under:-

"35. In other words, a pleading or a statement of the material facts is necessary on the side of the petitioner and, if his claim is contested, on the side of the respondent, for that enables them to formulate their case is the preparation of the hearing. Besides giving fair notice of the case of either side, that defines the points at issue and confines the controversy to them. It also enables the parties to bring out their evidence to best advantage, and eliminates prejudices or a snap decision. Pleading are thus of vital importance, for it there is no pleading of the necessary facts in a petition for the redress of a grievance, the petitioner has himself to thank for his ultimate discomfiture on that account."

Similar view has also been taken by the Supreme Court in the case of (2000) 10 SCC 339 Amla Chakravarty (dead) vs. Ranjit Kumar Choudhury In this regard, the views of their Lordships read under:-

"a) ..... So far as the third submission is concerned, a perusal of the pleading in the plaint shows that the suit filed by the landlord was on the basis of the second lease dated 2.12.1970, although it was not specifically referred to in the plaint. In the written statement the tenant admitted that the plaintiff is a landlord and he is a tenant. It was also admitted therein that there existed a relationship of landlord and tenant between him and the plaintiff, and further he has been paying rent to the plaintiff. It was very well understood before the trial court that the parties were

litigating on the basis of the second lease deed, namely, lease deed dated 2.12.1970. It is no doubt true that one of the preliminary objections taken by the tenant in his written statement was that the suit was bad for non-joinder of the other legal heirs of the original tenant and also an issue was struck to that effect. But the mere objection of framing of an issue in that respect was not sufficient, as no factual foundation was laid in that regard in the written statement and, therefore, there was no occasion for the Court to embark upon the said inquiry. There having been no factual foundation about the said plea, the High Court was not justified in entering into that question."

8. The principle enunciated by the Supreme Court in the aforementioned judgments when applied to the facts of the present case then it would transpire that the primary reliance by the plaintiff-appellant and defendant-respondent No. 1 was on the family settlement and only one sentence was incorporated stating that the property is ancestral in character as noticed by the learned lower appellate Court. In order to show that the property in the hands of Bachan Singh was ancestral in character, it was incumbent upon the plaintiff-appellant to lay the foundation as to how this property was ancestral and coparcenary by making averments that the property has fallen in the hands of Bachan Singh from his predecessor-in-interest and so on and so forthwith. In the absence of pleading by the plaintiff-appellant, framing of an issue or adducing of evidence was of no use. Therefore, I do not find that there is any illegality committed by the lower appellate Court in reversing the aforesaid findings of the Civil Judge. No reliance could be placed by the plaintiff-appellant and defendant-respondent No. 1 on the family settlement as has been rightly held by the Courts below because it was required to be registered u/s 17 of the Indian Registration Act, 1908 and for want of stamps as required by the Stamp Act, 1899. The so-called family settlement is also not dated and the same could not be proved by adducing any extrinsic evidence as the same is prohibited by Section 92 of the Indian Evidence Act, 1872. Therefore, there is no merit in this appeal. No question of law much less the substantive question of law, has been raised warranting admission of this appeal and the same is thus liable to be dismissed.

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