Hira Singh Vs Ishar Singh and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 3, 1964

Citation: (1964) 2 ILR (P&H) 338

Hon'ble Judges: Inder Dev Dua, J

Bench: Single Bench

Advocate: N.L. Dhingra, for the Appellant; Puran Chand, for the Respondent

Final Decision: Dismissed

Judgement

Inder Dev Dua, J.
This judgment will dispose of three appeals (Regular Second Appeals Nos. 402, 556 and 591 of 1963) which arise out

of the same facts and have actually been dealt with together by the Courts below.

2. The facts gaving rise to this controversy may briefly be stated. Sucha Singh, sometime in 1919 sold 86 kanals and 5 marlas of land in favour of

Hira Singh for a sum of Rs. 4.000. Baggu Singh, father of Ishar Singh, etc., Plaintiffs, brought the usual declaratory suit challenging the alienation.

Baggu Singh, it may be mentioned, was the uncle of the vendor Sucha Singh. The trial Court partly decreed the suit by declaring a valid charge on

the land to the extent of Rs. 1,200; this charge was on appeal raised by the learned District Judge, Ferozepur to Rs 1,300 on 16th October. 1920.

Hira Singh, vendee sometime later mortgaged the land in favour of Mukhtiar Singh. On Sucha Singh''s death which occurred in 1961 the sons of

Baggu Singh; brought the present suit for possession. A similar suit was also brought by Kartar Kaur, the daughter of Sucha Singh. The trial Court

dismissed the suit of Ishar Singh and others, sons of Baggu Singh, and decreed the suit of Kartar Kaur.

3. On appeal the learned Senior Subordinate Judge; decree the suit of Ishar Singh and others and dismissed that of Kartar Kaur. Three appeals

have accordingly been preferred in this Court, R.S.A. 402 of 1963, by Hira Singh and the other two by Kartar Kaur in the two suits.

4. The first point raised by Shri N.L. Dhingra in R.S.A. 402 of 1963 can be disposed of very briefly. He has contended that in lieu of 86 kanals

and 5 marlas during consolidation proceedings only 63 kanals and 8 marlas have been allotted, with the result, that it was only this area which

should have been decreed in favour of the decree-holder. This point is covered by ground No. 2 in the memorandum of appeal in this Court. The

grievance which has been stressed with force is that by means of amendment of the pleadings this point was brought out but has not been tried by

the Courts below. The settlement of issues has accordingly also been assailed. It is obvious that this point has not been urged in the lower appellate

Court and I find from the grounds of appeal taken in the lower appellate Court that this point was not agitated there. I am, therefore, disinclined to

entertain this point on second appeal. As a matter of fact it was for the Appellant to have obtained a proper issue on the pleadings and to have

sought trial of this plea. Having not done so, it is too late to ask this Court on second appeal to send the case back for framing a fresh issue for trial

on a point requiring evidence.

5. The main point which has been raised is short and it really arises on account of the enforcement of the Hindu Succession Act, according to

which the line of succession in regard to even landed property has been varied by bringing in new heirs who are not entitled to challenge alienations

of ancestral immovable property by male-holders.

6. The trial Court came to the conclusion that Smt. Kartar Kaur, being an heir of Sucha Singh, on his death in 1961; was entitled to succeed to this

property and was, therefore, entitled to take possession of the land in question on payment of Rs. 1,300. The lower appellate Court, however,

took the view that Smt. Kartar Kaur was not entitled to assail the alienation in favour of Hira Singh with the result that she is not entitled to take

benefit of the decree. According to the decree, therefore, the learned Senior Subordinate Judge thought that Baggu Singh"s sons were entitled to

take possession.

7. The learned Counsel for the Appellant has criticised this view on the ground that the declaratory decree of 1920 did not have the effect of

changing the line of succession which is now determined by statute and that Ishar Singh and others not being heirs when the succession opened

could not claim possession of the land in suit which formed a part of the estate of the deceased. Reference has been made by the learned Counsel

to Gurmit Singh v. Tara Singh 1959 P.L.R. 677, where the reversioners were held not to succeed to the land when the succession had opened

after the enforcement of the Hindu Succession Act, 1956. He has also assailed the light of Smt. Kartar Kaur to succeed on the ground that a

daughter derives her right to succeed only from her father and not from the common ancerstor with the result that she cannot be considered as an

agnate. Not being an agnate, she could not contest the alienation made by her father from whom she derived her title. The alienation being binding

on her, she could not claim a right to take possession of the land in question because as against her this no longer formed part of the estate of her

deceased father. Support for this contention has been sought from Milkha Singh v. Ram Kishen A.I.R 1934 Lah. 725, and also from Mt. Basso v.

Harnam Singh AIR 1937 Lah. 636, Reference has also been made to Taro Vs. Darshan Singh and Others, but the facts of that case were peculiar

and do not seem to me to be of any assistance in determining the point raised in the case in hand.

8. Shri Puran Chand appearing for the collaterals has also challenged the right of the daughter to succeed. He has, however, in support of the

collaterals" claim merely submitted that the decree which set aside the alienation and held the sale not binding on the then Plaintiffs gives the

collaterals a right to obtain possession of the property.

9. Shri R.M. Vinayak, appearing for Smt. Kartar Kaur, has submitted that his client is entitled to take benefit of the decree because it has

converted the sale into a mortgage and this conversion can be taken advantage of by the person who happens to be the true heir and successor at

the time the succession opens.

10. I have devoted my most anxious attention to the arguments adressed. The position in regard to the effect of declaratory decree obtained by

collaterals in a suit challenging alienation of ancestral property as being contrary to the restrictions imposed by Punjab custom has been the subject-

matter of various judicial pronouncements. The position, as I understand it is, that a declaratory decree obtained by one or more reversioners

enures for the benefit of the entire reversionary body and the individual reversioner who actually happens to be the next heir at the time the

succession opens is entitled to take advantage of the decree, the sole object of which is to remove or get rid of a common apprehended injury in

the interests of all the reversioners, whether presumptive or contingent. The reversioner actually suing has no personal interest apart from the

interest common with the entire reversionary body, the reversionary interest being a mere possibility to succeed or spes suecessionis, a possibility

common to all reversioners. It is from the nature of things difficult to predicate the actual heir at the time of inheritance falling in. The declaratory

decree merely saves from the operation of the alienation the right of the actual reversioner entitled to succeed and it does not in law completely

wipe out the alienation by declaring it to be void in the sense of being non-existent; nor does such a decree change the line of succession. If the

actual heir for certain reasons is incapable of taking advantages of such a decree, it does not mean that someone else who, if an heir, could have

taken advantage of the decree, becomes entitled to succeed according to the law of succession. If no reversioner entitled to take advantage of the

decree is an heir when the succession opens, the property, which is subject-matter of alienation, would under the law be held not to form part of

the estate left by the deceased with the result that neither the actual heir nor the reversioner, who, if he had been an heir, could have enjoyed the

benefit of the declaratory decree, can dispossess the alienee.

11. For the foregoing reasons, in my opinion, the appeal by the vendee must succeed and the judgments and decrees of the Courts below set aside

and the suit both of the reversioners and of Smt. Kartar Kaur be dismissed. In the peculiar circumstances of the case, however, parties are left to

bear their own costs throughout.