
Milkha Singh and Another Vs Tara Singh and Others

Second Appeal No. 107 of 1963

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 6, 1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 23 Rule 2#Registration Act, 1908 " Section 47, 61#Transfer of Property Act, 1882 " Section 54

Citation: AIR 1973 P&H 445

Hon'ble Judges: Prem Chand Pandit, J; Bhopinder Singh Dhillon, J

Bench: Division Bench

Judgement

1. The facts giving rise to this second appeal are these. The property in dispute is some agricultural land, situated in village Bolewal, District

Gurdaspur. It belonged to Lal Singh and his brother Sher Singh in equal shares. Lal Singh died and on his death, his share was inherited by his son

Milka Singh. On 15th December, 1957, Sher Singh is alleged to have executed a will in favour of Kundan Singh son of Milkha Singh. On 16th

October, 1958, Sher Singh died without leaving any child or a widow. His share in the property was mutated by the revenue authorities in favour

of his sister Shrimati Ramo. On 23rd June, 1960, Kundan Singh minor, through his father Milkha Singh., and Milkha Singh on his own behalf as

well, brought a suit, out of which the present second appeal has arisen, against Ramo, for declaration that they were the owners-in-possession of

the land in question.

2. The suit was contested by Ramo, defendant No. 1, on a number of pleas, but in the present appeal, it is not necessary to mention them, because

the case is being decided on a preliminary issue.

3. During the pendency of the suit, on 10th February, 1961, the plaintiffs filed an application under Order 23, Rule 2, Code of Civil Procedure,

saying that they had compromised the matter with the defendant, Ramo, on 7th February, 1961. By the aid compromise, the suit had been

adjusted, because Ramo had agreed that the same should be decreed. A prayer was, therefore, made that the compromise be recorded and the

suit decided accordingly.

4. This application was opposed by Ramo. It may be stated that she did not deny her thumb-impression on the written compromise but pleaded

that the compromise was vitiated by fraud and that she had no right to effect the same, because, on 7-2-1961, she did not possess any rights in the

property, inasmuch as on 28th October, 1960, she had sold her share in favour of Sohan Singh and others for Rs. 15,250/-. After the said sale,

therefore, she could not say that the suit be decreed.

5. It may be mentioned that after this defence was taken by Ramo, the plaintiffs impleaded her vendees as defendants Nos. 2 to 10 in the suit.

6. A preliminary issue was framed regarding this matter and it was ""whether defendant No. 1 compromised the suit with the plaintiffs? If so, on

what terms and with what effect?

7. On merits also, the following issues were framed by the trial Judge:--

1. Whether the plaintiffs are owners in possession of the land in suit?

2. Whether is suit is maintainable in the present form?

3. Whether defendants Nos. 2 to 10 have purchased the land in suit from defendant No. 1? If so, when and with what effect?

8. Evidence was led by the parties. It was somewhat surprising that instead of trying the issue regarding the compromise as a preliminary one, the

whole case was decided. The learned Judge came to the conclusion that the suit had not been compromised by Ramo and that she could not do

so, because she had sold the property in dispute to defendants Nos. 2 to 10 on 28th October, 1960, and therefore, the compromise alleged to

have been made by her on 7th February, 1961, was not legally effective. On merits, under Issue No. 1 it was held that Milkha Singh was the

owner of half share in the land, except Khasra Nos. 193, 646 and 648 which were in possession of the tenants of the mortgagees, while Kundan

Singh, minor plaintiffs No. 1, was neither owner of the other half share nor was he in possession of any portion of the land. Under issue No. 2, the

finding was that the suit was maintainable in the present form. The finding under issue No. 3 was that defendants Nos. 2 to 10 had purchased the

land in suit from Ramo, defendant No. 1, and they had a valid title thereto. On these findings the Trial Court passed a decree for a declaration that

Milkha Singh, plaintiff No. 2, was the owner of only half share in the land, but he was in actual or constructive possession of the entire land in

dispute, except Khasra Nos. 193, 646 and 648, which were in possession of the tenants of the mortgagees.

9. When this matter went in appeal, the learned Additional District Judge affirmed the findings of the trial Court and dismissed the same. The

plaintiffs have come here in second appeal.

10. The only question that was argued by the learned counsel for the appellants was that the finding of the court below regarding the matter of the

compromise was incorrect. Counsel submitted that the learned Additional District Judge was wrong in law, when he held that Ramo had no interest

in the property on 7th February, 1961, when the alleged compromise took place between her and defendant No. 1, because she had already

transferred her rights in the land to defendants Nos. 2 to 10 on 28th October, 1960, i.e., before the date of the compromise. According to the

learned counsel, the title in the property passed to defendants Nos. 2 to 10 only on 1st March, 1961, when the sale deed dated 28th October,

1960, was registered. It is only on the registration of the deed that the said sale became complete and title passed to the defendants. According to

him, therefore, the learned Additional District Judge had made an error in law, when he held that the title had already passed to the vendees on

28th October, 1960, when Ramo executed the sale-deed in their favour.

11. The facts are not in dispute. It is agreed that the sale-deed, Exhibit D-1 by Ramo in favour of Sohan Singh and others, defendants Nos. 2 to

10 had been executed on 28th October, 1960. This document had been presented for registration on 15th February, 1961, but the same was

actually registered on 1st March, 1961. The question for decision is as to when did the title in the property pass to the vendees? Was it on 28th

October, 1960, as held by the Courts below or 1st March, 1961, when the said sale-deed was registered as urged by the learned counsel for the

appellants?

12. Learned counsel for the appellants referred to two decisions in this connection viz. Ram Saran Lall and Others Vs. Mst. Domini Kuer and

Others, and Ram Ekbal Rai and Others Vs. Jaldhari Pandey, .

13. Before I come to the authorities mentioned above, I may state that in Punjab when immovable property of the value of Rs. 100/- and upwards

is sold, the sale-deed has to be registered. There is no quarrel about the proposition that such a sale-deed will be complete only when it is

registered. It is undisputed that the registration will be complete only when the sale-deed is copied out in the records of the Registration Office as

provided in Section 61 of the Registration Act. But the title in the property on registration will, however, pass to the vendees from the date when

the said deed was executed. This is by virtue of the provisions of Section 47 of the Registration Act, which lay down:

A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or

made, and not from the time of its registration.

14. A bare reading of this provision will show that the registered document will operate from the time from which it would have commenced to

operate, if no registration thereof was required by law and not from the time of its registration. Admittedly, this document, as I have already said,

was executed on 28th October, 1960. If under the law, it was not required to be registered, it would have operated from the time it was executed.

But it had to be registered under the law and, therefore, under the provisions of Section 47 of the Registration Act, it would operate on the date

when it was executed, but that would happen only if it was subsequently registered. If it was not registered, no title in the property would pass to

the vendees under it. However, the moment it was registered the title in the property would pass to the transferees from the date of its execution.

15. Now coming to the authorities relied on by the learned counsel, in Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, the Supreme

Court observed:

One of the requisites before the right of pre-emption can be exercised is the preliminary demand by the pre-emptor and such demand must be

made after the completion of the sale. The provisions of the Transfer of Property Act supersede the principles of the Mohammedan Law as to sale

and it is to the statute that one should look to find out whether, and if so when, a sale is complete in order to give rise to a right of pre-emption. u/s

54 of the Transfer of Property Act sale of tangible immovable property of the value of rupees 100/- and upwards, can be made only by a

registered instrument. The registration under the Registration Act is not complete till the document to be registered has been copied out in the

records of the Registration Office as provided in Section 61 of the Act. Section 47 of the Registration Act has nothing to do with the completion of

the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not

completed until the registration of the instrument of sale is completed cannot be said to have been completed earlier because by virtue of Section

47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date.

16. The above decision, it will be seen, only deals with the point as to when a sale become complete in order to give rise to a right of pre-emption.

17. A Division Bench of this Court in Ram Chand's case 1972 Pun LJ 584 held:

A sale is completed only when registration of the sale deed is completed as contemplated by Section 61 of the Registration Act. A sale which is

admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by

virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date.

18. The above-quoted ruling relied on Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, and dealt with in Section 21 of the Punjab

Pre-emption Act, which says:

Any person entitled to a right of pre-emption may, when the sale or foreclosure has been completed, bring a suit to enforce that right.

19. According to this provisions, no body can file a suit for pre-emption till the sale is complete. When is the sale complete u/s 21 of the Punjab

Pre-emption Act? As I have already said, the sale will be complete when the sale-deed is registered and if that is not done, the sale will remain

incomplete. Section 21, however, does not mention as to when the right or title in the property passes. That matter has been dealt with in Section

47 of the Registration Act. The two authorities relied on by the learned Counsel for the appellants deal with the only point as to when the pre-

emptor can bring a suit for pre-emption and they lay down that he can bring a suit only when the sale is complete and while deciding this matter

these rulings have held that the sale will be complete only when the sale deed is registered. The other point, with which we are concerned in this

case, did not arise for consideration there.

20. In view of this, it is clear that Ramo had no title in the property on 7th February, 1961, when the compromise took place, because she had

already sold the property to the vendees on 28th October, 1960, and the title passed to them on that very date, when the document was later

registered on 1st March, 1961. In this situation, the finding of both the Courts below on this point is quite correct.

21. No other point was agitated before us by the learned counsel for the appellants, except this that his clients were prejudiced, because no

specific issue was framed regarding the alleged will dated 15-12-1957.

22. This point was never raised either before the trial Court or the lower Appellate Court. The parties under stood their respective positions and

led evidence regarding the will under Issue No. 1 and it was on that account that no specific issue was framed regarding it. Besides, nobody even

claimed a separate issue regarding the said will and that matter has been dealt with while discussing issue No. 1. In our opinion, therefore, the

appellants have not been prejudiced by the non-framing of a separate issue regarding the will.

23. The result is that this appeal fails and is dismissed. In the circumstances of this case, however, we will leave the parties to bear their own costs

throughout.

Bhopinder Singh Dhillon, J.

24. I agree.

25. Appeal dismissed.