Chanan Singh Vs Pirtam Kaur and another

Civil Regular Second Appeal No. 1505 of 1973

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 2, 1983

Acts Referred:
Transfer of Property Act, 1882 â€" Section 123

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: Ram Singh Bindra and Mr. Ram Sarup, for the Appellant; Gurbachan Singh and Naginder Singh, for the Respondent

Final Decision: Dismissed

Judgement

J.V. Gupta, J.
This is plaintiffs second appeal whose suit for possession of the agricultural land measuring 49 kanals 18 marlas was

decreed by the trial Court, but dismissed in appeal.

2. Battan Singh had two sons, named, Bantu and Chanan alias Channu alias Swarn Singh. On his death he was succeeded by his aforesaid two

sons. On the death of Bantu, he was succeeded by his widow Pritam Kaur, defendant. Pritam Kaur, defendant, re-married Channu defendant, by

karewa. Thereafter, the estate which she had inherited from her previous husband Bantu was mutated in favour of Channu, defendant. Later on,

the said Channu made an oral gift on September 5, 1955 of that land in favour of his mother Rattan Kaur, the widow of Battan Singh, for which

the mutation was sanctioned on September 6, 1955, vide Exhibit P. 13. After. the said gift, Channu, defendant, being the mukhtiar of his mother,

Rattan Kaur, the donee, sold the land measuring 49 kanals 18 marlas to Chanan Singh, son of Labh Singh, the plaintiff, vide two sale-deeds dated

November 19, 1958, Exhibit P. 2 and December 14, 1958, Exhibit P. 1. On the basis of the said sale deeds, the plaintiff filed the present suit on

August 18, 1969, for possession of the suit land, against Pritam Kaur; her husband Channu and Channu''s mother Rattan Kaur, defendants Nos. 1,

2 and 3, respectively. In the trial Court, the suit was contested only by Pritam Kaur, defendant, whereas the other two defendants allowed the

proceedings to be proceeded ex parte against them. Shrimati Pritam Kaur, defendant, resisted the suit inter alia on the ground that she was the

owner of the suit land and that she never forfeited the estate on her re-marriage with Channu, defendant, as alleged in the plaint. It was further

pleaded that she had been in possession of the suit land for more than twelve years and had, thus, become its owner by adverse possession. On

the pleadings of the parties the trial Court framed the following issues:

1. Whether the present suit is bad for misjoinder of causes of action?

2. Whether the present suit is barred by time?

3. Whether the present suit is not maintainable in the present form?

4. Whether the plaintiff is the owner of the property, in dispute?

5. Whether the plaintiff is not competent to raise the plea of loss and forfeiture of defendant No. 1''s right of ownership in the estate of her

deceased husband Bantu?

6. Whether the defendant has been in adverse possession of the suit land for more than 12 years? If so, its effect?

7. Relief.

The suit was held to fee within time by the trial Court. It was also held that the plaintiff was the owner of the suit land in view of the sale-deeds,

Exhibits P. 1 and P. 2. The pleas taken by Pritam Kaur, defendant, were negative. Consequently, the plaintiff''s suit for possession of the suit land

was decreed. In appeal, the learned Additional District Judge reversed the said finding of the trial Court and came to the conclusion that Pritam

Kaur, defendant, had not forfeited the estate inherited by her from her previous husband Bantu on her remarriage with Channu, defendant. It was

also found that in any case Pritam Kaur, defendant, remained in possession thereof from the time of her re-marriage with Channu, defendant, and

as such, she had perfected her title thereto by adverse possession. As regards the alleged gift made by Channu, defendant, in favour of his mother,

Battan Kaur, the learned Additional District Judge came to the conclusion that the gift had taken place on September 5, 1955, whereas the

provisions of Section 123 of the Transfer of Property Act, (hereinafter called the Act), were made applicable to the State of Punjab vide

notification dated March 26, 1955, which came into force from April 1, 1955, and, therefore, no oral gift could be made by Channu, defendant.

So, it was concluded that Rattan Kaur could not become the owner of the land sold by her through her attorney Channu, defendant. Thus, no valid

title passed to the plaintiff vide sale-deeds, Exhibits P. 1 and P. 2. In view of these findings, the plaintiff''s suit was dismissed. Dissatisfied with the

same, the plaintiff has come up in second appeal to this Court.

3. The Learned Counsel for the appellant, contended that on re-marriage by Pritam Kaur, defendant, with the brother of her deceased husband

Bantu, she forfeited her rights in the estate inherited by her from her husband Bantu and, therefore, she had no right or interest in the suit land. He

also challenged the finding of the lower appellate Court that she had perfected her title to the suit land by adverse possession. Though it was

conceded that no oral gift could be made in view of the provisions of Section 123 of the Act, which had been made applicable to the State of

Punjab with effect from April 1, 1955, yet it was contended that the same could not be challenged by Pritam Kaur, defendant, in this suit. On the

other hand, the Learned Counsel for Pritam Kaur, defendant, submitted that once it is found that no oral gift could be made in favour of Rattan

Kaur by Channu, defendant, then no title passed to the plaintiff vide sale deeds, Exhibits P. 1 and P. 2 and on that basis alone, the plaintiff"s suit

was liable to be dismissed. The plaintiff, in order to succeed in his suit, must prove a valid title in his favour. In that situation, it will be immaterial

whether the defendant forfeited her rights in the estate inherited by her on the death of her husband Bantu, on account of her re-marriage with

Channu, the brother of Bantu, deceased, or not.

4. I have heard the Learned Counsel for the parties and have also gone through the case law cited at the bar.

5. It appears that the main controversy between the parties in the Courts below as well as in this Court centers around the question whether under

the custom Pritam Kaur, defendant, for feited her rights in the estate of her deceased husband, Bantu, on account of her re-marriage with Channu,

defendant, the brother of her husband Bantu, or not? On behalf of Pritam Kaur, defendant, reliance was placed on the Full Bench decision of this

Court in Charan Singh Harnam Singh and Another Vs. Gurdial Singh Harnam Singh and Another, , whereas on behalf of the appellant, reliance

was placed on another Full Bench judgment of this Court in Sada Kaur Vs. Bakhtawar Singh and Others, . The reference to the Full Bench in

Sada Kaur"s case (supra), was necessitated because in the Full Bench decision of this Court in Charan Singh"s case (supra), presided over by

three Hon"ble Judges, it was held by majority, that according to the special custom prevailing among Jats, a re-marriage by a widow in the

Karewa form with the brother of the deceased husband does not cause a forfeiture of the widow"s life estate in the property of her first husband

and that she continues to hold the said estate, and the said proposition was disputed in the former case. So, the question referred to the Full Bench

in Sada Kaur"s case (supra), was (at P. 293)

Whether by universal custom among the Sikh Jats of the Punjab, a widow does not forfeit her life estate in her husband"s property by reason of

her remarriage in Karewa form with her husband"s brother, and if so, whether the custom admits of exceptions among different tribes of Sikh Jats

and in particular among Dhaliwal Jats of Muktear Tehsil of Ferozepur District.

In paragraph 27 of the judgment in the above said Full Bench case, it was concluded that the statement introduced by the editor for the first time in

1925 edition of the Rattigan''s Digest was not borne out by the decision in Sant Singh''s case (AIR 1924 Sind 17 : 76 Ind Cas 408) or any other

case referred to therein. The decision in the earlier Full Bench judgment of this Court in Charan Singh''s case (supra), was mainly based on the

said, statement introduced by the editor for the first time in 1925 edition of Rattigan''s Digest.

Thus, in view of the latter Full Bench judgment of this Court in Sada Kaur''s case (supra), presided over by five Hon''ble Judges, it could not be

successfully argued on behalf of Pritam Kaur, defendant that she did not forfeit her rights in the estate inherited by her from her previous husband

Bantu on account of her re-marriage with his brother Channu, defendant in karewa form. Mutation in respect of the estate of Bantu was sanctioned

in favour of Channu, defendant. At the time of sanctioning the same, the presence of Pritam Kaur, defendant has also been noticed vide, Exhibit P.

12. It appears that later on, in appeal the said order was set aside, but no effect was given to that order passed in appeal till December 14, 1959.

Meanwhile, the suit land was sold by Rattan Kaur, defendant, through her attorney. Channu, defendant, to the plaintiff, vide sale-deeds, Exhibits P.

1 and P. 2. In any case, it is of no consequence because Pritam Kaur, defendant, had forfeited her rights in the estate of her deceased husband

Bantu under the custom.

6. Even if it be held that Pritam Kaur, defendant, had forfeited her rights in the estate of her deceased husband Bantu, it does not entitle the plaintiff

to get the decree in his favour on the basis of the two sale-deeds, Exhibits P. 1 and P. 2 in his favour.

Admittedly, the plaintiff purchased the land which was in the ownership of Rattan Kaur to whom it had been gifted away by her son Channu,

defendant, by an oral gift. As observed earlier, admittedly, no oral gift could be made in view of the provisions of Section 123 of the Act. Thus,

Rattan Kaur, defendant, had no valid title as to transfer the same in favour of the plaintiff''s. Once it is so found, then the plaintiff''s suit for

possession is bound to fail on that ground alone. It is well settled that only a person with a better title can dispossess a person who may be in

wrongful possession thereof. Under the circumstances, the plaintiff cannot get the decree for possession of the suit land against Pritam Kaur,

defendant, even if it be held that she had forfeited her rights in the suit land on account of her remarriage with Channu, defendant.

7. Now the question arises, as to what other relief, if any, the plaintiff is entitled to in the present suit?

8. From the facts and circumstances of this case, it is quite clear that all the three defendants were closely related. Rattan Kaur, defendant, was the

mother whereas Channu, defendant, is her son and Pritam Kaur, defendant, is his wife, Channu and Rattan Kaur, defendants decided to allow the

suit to proceed ex party against them. Only Pritam Kaur, defendant, contested the suit as she claimed herself to be in possession of the suit

property. In the sale-deeds, Exhibits P. 1 and P. 2, it is clearly recited that in case for any default in the title of Rattan Kaur, defendant, the vendee-

plaintiff suffers, she will be responsible for the same. Therefore, under the circumstances, the plaintiff is certainly entitled to the refund of the sale

amount which he paid to Rattan Kaur, defendant, through her attorney Channu, defendant, who also happens to be her son. The sale amount paid

by the plaintiff vide sale deed, Exhibit P. 2 was Rupees 500/-, whereas the sale amount paid by him vide sale deed, Exhibit P. 1, was Rs. 1,500/-.

Thus, the plaintiff is entitled to the refund of Rs. 2,000/- from Rattan Kaur, defendant, as well as from her son Channu, defendant, who acted as

her attorney and received the said amount from the plaintiff. The trial Court was competent to pass the decree to this effect in view of the facts

proved on the record in this case. Moreover, in the plaint also, it was prayed that any relief which the Court may think fit may be granted to the

plaintiff. In view of the provisions of Order XII, Rule 33, Code of Civil Procedure, this Court has the power to pass any decree and to make any

order which ought to have been passed or made in view of the facts and circumstances of the case proved on the record. Since during the

pendency of the appeal, Shrimati Rattan Kaur, defendant, died and she was succeeded by her son Channu, defendant, who was already on the

record, her name was struck off from the array of the respondents vide this Court order dated December 17, 1980. Thus, the plaintiff is entitled to

recover the said amount of Rs. 2,000/- from Channu, defendant in his personal capacity as well as being the legal representative of his deceased

mother Rattan Kaur, defendant. Besides, since the plaintiff was. deprived of this amount wrongfully by Rattan Kaur and her son Channu,

defendant, the plaintiff will be entitled to interest thereon at the rate of six per cent. Per annum from the date of the institution of the suit, i.e., August

18, 1969 till its realization. for possession of the suit land stands dismissed.