
Jasjit Singh and another Vs Smt. Charanjit Kaur and another

Second Appeal No. 2105 of 1989

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 11, 1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Order 41 Rule 27#Evidence Act, 1872 â€” Section 13, 44#Hindu Succession Act, 1956 â€” Section 14, 14(1)

Citation: AIR 1995 P&H 177 : (1994) 107 PLR 458

Hon'ble Judges: S.K. Jain, J; G.R. Majithia, J

Bench: Division Bench

Advocate: R.K. Chhokar, for the Appellant; Arun Palli, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

G.R. Majithia, J.

This Regular Second Appeal is directed against the judgment and decree of the first appellate Court affirming on appeal

those of the trial Judge.

2. Facts first:

Fateh Singh was the common ancestor. He had three sons Partap Singh Tara Singh and Dalip Singh. Partap Singh died leaving behind his son

Hardial Singh. Dalip Singh died leaving behind Chater Kaur, his widow and two daughters, namely, Harcharan Kuar alias Charanjit Kaur and

Balbir Kaur. Dalip Singh had executed a will on Oct. 16, 1937 alienating a part of his property in favour of his daughters. On Nov. 26, 1945,

Dalip Singh executed another will in favour of his wife regarding the disputed property. In 1953. Hardial Singh son of Partap Singh filed a suit for

declaration that Dalip Singh could not alienate the property under wills, dated Oct. 16, 1937 and Nov. 26, 1945. The trial Court decreed the suit

on May 10, 1954. The legatees, namely, Chatar Kuar, Harcharan Kaur alias Charanjit Kuar and Balbir Kaur challenged the judgment and decree

in appeal. At the appellate stage, the parties to the its arrived at a compromise. The terms of the compromise read thus :--

It is agreed that the property in dispute is Cis Sutlej Jagir and as such, Dalip Singh deceased had no right to make a will, nor the widow, Sardarni

Chater Kaur, has a right to inherit the property as such. However, as a matter, of grace w.e.f. Kharif 1954, the amount- of maintenance, which

was being paid to Sardarni Chatar Kaur at the rate of Rs. 150/- per annum, is increased to Rs 28/-per annum, i.e., in other words, after Kharif,

1954. half yearly payment will be made of Rs. 140/- and thereafter, similar payment will be made every half year. In addition Sardar Hardial Singh

has agreed that Mst. Chatar Kaur may keep the share of land of Dalip Singh in Dhiro Majra by way of maintenance for her life time. She will not

be entitled to mortgage or burden the land whatever, but otherwise, she will be entitled to enjoy it in any manner either by giving it or chakota or on

batai.

3. The appeal was disposed of in terms of the compromise. On July 13, 1976, Chatar Kaur executed a will bequeathing the lInd to her daughter,

Smt. Charanjit Kuar given to her under the compromise. "Hardial Singh filed a suit for possession of 1 /2 share and for permanent injunction

restraining the defendants respondents from alienating the property in any manner or Cutting or removing the trees standing thereon. He asserted

that the property was a part of Cis-Sutlej Jagir. It was held by his grand-father, Shri Fateh Singh, that the male holder had only life estate in the

property and they could not alienate the same or any part thereof. After the death of the male holder, it was to pass on next male holder. The

female heir has only a right of maintenance. Chatar Kaur, mother of the defendant/respondent (hereinafter, the defendant) was given the property

for life in lieu of maintenance under the civil court decree and she has no right to alienate the same in any manner. The will executed by Smt. Chatar

Kaur in favour of the defendant was invalid.

4. The suit was contested by the defendant. She pleaded that the suit land was given to Chatar Kaur in lieu of maintenance and she became full

owner on coming into force of the Hindu Succession Act, 1956 (for short, the Act). Chatar Kaur executed a valid will in favour of the defendant

on July 13, 1976.

5. On the pleadings of the parties, the following issues were framed :--

1. Whether the property in dispute was a Cis Sutlej Jagir and could not be transferred by any body? OPP (Objected to)

2. Whether the plaintiff became the owner of 1 / 2 share of the land in dispute on the basis of judgment dated 10-5-1965 of the learned Sub Judge

1st Class, Ludhiiana? OPP.

3. Whether defendant No. 1 was a limited owner on the basis of compromise, dated 15- 11-1954? OPP.

4. Whether Mst. Chatar Kuar had executed a registered valid will dated 30-7-1976 in favour of defendant No. 1 bequeathing her entire property?

OPD

5. Whether the defendant has become owner of the land in dispute by way of adverse possession? OPD

5-A. Whether Mst. Chatar Kuar became full owner of the land in dispute on coming into force of the Hindu Succession Act? OPD

6. Relief.

6. The trial Judge answered issued No. 1 in favour of the plaintiff, issue Nos. 2 to 5 and 5A were dealt with together and it was held that the

plaintiff was not owner of the property in dispute and that Chatar Kaur acquired a limited ownership on the basis of compromise deed, Exhibit P-

5, She became absolute owner of the disputed property on the promulgation of the Act. She could validly will away the same to the defendant, her

daughter, and the will, Exhibit D-2, was validly executed. On ultimate analysis, the suit was dismissed.

7. Aggrieved against the judgment and decree of the trial Court, the plaintiff assailed the same in first appeal. The only question raised before the

first appellate Court was whether Smt. Chatar Kaur became absolute owner of the property in dispute in view of the provisions of Section 14(1)

of the Act. The first appellate Court answered the question in favour of the defendant and against the plaintiff holding that Chatar Kuar became full

owner of the property in view of the provisions of sub-section (1) of Section 14 of the Act and the appeal was dismissed.

8. Aggrieved against this judgment and decree of the first appellate Court, the plaintiff came up in Regular Second Appeal. The appeal came up for

hearing before a learned single Judge of this Court on May 4, 1993.

9. Before the learned single Judge, it was pointed out that an identical question came up for adjudication in Regular Second Appeal No. 553 of

1976 where a female was given a part of the property of Cis Sutej Jagir in lieu of maintenance and this Court held that she had become full owner

u/s 14(1) of the Act. The learned single Judge had reservations regarding the view taken in that judgment. He accordingly directed that the papers

be laid before Hon"ble the Chief Justice for referring the case to a larger Bench. It is now this case has been placed before us for disposal.

10, In Regular Second Appeal No. 553 of 1976, title as Hardial Singh v. Smt. Charanjit Kaur alias Harcharan Kaur (Exhibit D-15), the dispute

arose as under:

Tara Singh son of Fateh Singh held Cis Sutej Jagir jointly with his brothers Partap Singh and Jair Singh. On the death of Tara Singh, his estate was

mutated in favour of his brothers Dalip Singh and Hardial Singh Plaintiff (son of predeceased brother Partap Singh). Tara Singh had left a widow,

Amar Kaur. Under the written compromise, Amar Kaur was given a share in the land situated in village Dhiro Majra and right of residence in the

residential house at Dhiro Majra besides maintenance allowance at the rate of Rs. 125/- per month. On February 18, 1964, Amar Kaur

bequeathed the property given to her by way of maintenance to the defendant. The plaintiff challenged the will on the ground that Amar Kaur had

only a limited estate and the will executed in favour of the defendant was invalid. The suit was contested by the defendant inter alia on the ground

that Smt. Amar Kaur, testator, had become absolute owner of the property by virtue of Section 14(1) of the Act and she could validly will away

the same. The trial Court as well as the first appellate Court held that Smt. Amar Kaur had become full owner of the property by virtue of Section

14(1) of the Act and the suit filed by the plaintiff was dismissed. The plaintiff challenged the same in second appeal in this Court and the same was

dismissed by the learned single Judge of this Court observed thus:

After hearing the learned counsel for the parties and on perusal of the record, I am of the view that the matter is fully covered by the decision of

the Supreme Court in *Vadde-boyina Tulsamma v. Vaddeboyina Sesha Reddy (dead)* by L. Rs. AIR 1977 SC 1944. Shrimati Amar Kaur was

granted property out of the estate left by her husband by way of maintenance in 1920. She remained alive when the Act came into force, with the

result that u/s 14(1) of the Act, she became full owner thereof, which otherwise had to be considered as life interest. Hence, there is no merit in this

appeal and the same is hereby dismissed with costs.

11. The judgment rendered in Regular Second Appeal No. 553 of 1976 attained finality. The judgment rendered in the said appeal is relevant u/s

13 of the Evidence Act. It is proof of a transaction where the property given to a female for maintenance was apart of Cis Suttiej Jagir and on the

commencement of the Act, she claimed that she had become absolute owner by virtue of Section 14(1) of the Act and this Court had so held it.

The judgment rendered in Regular Second Appeal No. 553 of 1976 will be a proof of a transaction by which the right was asserted, denied and

ultimately recognised. The Section applies to all kinds of rights, whether rights of full ownership or falling short of ownership. The term "right"

comprehends every right known to the law. It includes both corporeal and incorporeal rights including "a right of ownership". The decision

rendered in Regular Second Appeal No. 553 of 1976 is admissible in evidence u/s 13(a) of Act. The party aggrieved could either challenge it in

appeal or avoid it in any manner prescribed u/s 44 of the Evidence Act. Its correctness cannot be assailed in these proceedings. This aspect of the

matter was not brought to the notice of the learned single Judge.

12. Learned counsel for the appellants submitted that there are judicial precedents in which it was held that Cis Suttiej Jagir would devolve on a

male heir and is inalienable. In those decisions, the question arising for adjudication in these proceedings did not arise and this would not help the

learned counsel. We do not think it necessary to deal with the documents as in the instant case, the disputed question was resolved in Regular

Second Appeal No. 553 of 1976, which judgment has attained finality.

13. The defendant brought on record certified copy of the sale deed, exhibited as C-1 on moving an application under Order 41, Rule 27 of the

CPC and the same has been disposed of by an order of even date. The plaintiff sold a part of the property of Cis Sutej Jagir as an absolute

owner. The learned counsel wanted to highlight that the Cis Sutej Jagir property has always been treated as personal property by the male

holders. We need not to deal this question in these proceedings as it is not necessary for resolving the question in dispute.

14. For the reasons stated above, the appeal fails and is dismissed, but with no order as to costs.

15. Appeal dismissed.