

(2010) 08 P&H CK 0360

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Jarnail Singh (since deceased)
through his L.Rs. Gurmail Singh
and Others

APPELLANT

Vs

Gurmail Kaur and Others

RESPONDENT

Date of Decision: Aug. 5, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 24, 100
- Evidence Act, 1872 - Section 50

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.

As the Courts below duly recapitulated and described the factual matrix of pleadings and evidence brought on record by the parties in detail, therefore, there appears to be no necessity to again reproduce and repeat the same. However, the matrix of the facts, which need a necessary mention, for disposal of the present appeal and emanating from the record, is that Gurmail Kaur daughter of Santa Singh alias Basant Singh respondent No. 1-plaintiff (hereinafter to be referred as " the plaintiff") filed the suit against Jarnail Singh son of Sardara Singh (since deceased), being represented by his legal representatives and others appellant-defendants (hereinafter to be referred as "the defendants") seeking a decree for declaration to the effect that she is joint owner and in possession of the land in dispute.

2. The case set up by the plaintiff, in brief, in so far as relevant, was that Bhagwan Singh was the original owner of the land in dispute. He had four sons, namely Sardara Singh, Santa Singh alias Basant Singh, Vir Singh and Partap Singh, besides three daughters Sham Kaur, Santo alias Sito and Partap Kaur. Partap Singh and Vir Singh sons of Bhagwan Singh died unmarried and issueless. Thereafter, Sardara

Singh and Santa Singh sons of Bhagwan Singh became the owners and in possession to the extent of ♦ share each in the suit land. Santa Singh alias Basant Singh died on 29.6.1956 before commencement of the Hindu Succession Act (for short "the Act"), leaving behind Nand Kaur, his widow and Gurmail Kaur daughter.

3. Concisely, the plaintiff claimed that her mother Nand Kaur was residing with her and she used to serve her till her death. Therefore, in lieu of the services rendered, Nand Kaur executed the registered Will dated 4.8.1982 (Ex.P1) bequeathing her share in the entire property to the plaintiff. Defendant Nos. 1 to 21 and 23, legal representatives of Sardara Singh (deceased) were also stated to be entitled to remaining share in the suit land.

4. Levelling a variety of allegations, in all, according to the plaintiff, she is joint owner and in possession to the extent of ♦ share by virtue of registered Will (Ex.P1), while defendant Nos. 1 to 21 and 23 are also joint owners of the remaining ♦ share in the suit property. The plaintiff further claimed that the remaining defendants did not have any right, title or interest in it and the contrary entries in the revenue record are null, void and not binding on her rights. On the basis of aforesaid allegations, the plaintiff filed the suit for a decree of declaration against the defendants in the manner depicted here-in-above.

5. The contesting defendants contested the suit and filed the written statements, inter-alia pleading certain preliminary objections of, maintainability of suit, locus standi, cause of action of the plaintiff, limitation, nonjoinder, misjoinder of necessary parties, Court fees and jurisdiction. However, on merits, it was admitted that Sardara Singh, Santa Singh alias Basant Singh, Partap Singh and Vir Singh sons of Bhagwan Singh were owners and in possession of the suit property. According to the contesting defendants, Basant Singh was living, being looked after and served by his brother Partap Singh. He died unmarried and issueless. Sequently, Vir Singh, Sardara Singh and Partap Singh sons of Bhagwan Singh also died on different occasions and mutations of their inheritance were sanctioned in favour of defendant Nos. 1 to 21 and 23. Succinctly, according to the contesting defendants, they became owners and in possession and the plaintiff has no right, title or interest in the suit property.

6. Sequently, defendant Nos. 55 and 56 pleaded that Partap Singh, during his life time and with his free will, sold a part of land of his ownership alongwith Gurdev Singh, Mukhtiar Singh, Kartar Singh and Jarnail Singh to them, vide registered sale deed dated 10.7.1978 for Rs. 5000/- and handed over the actual possession thereof. The plaintiff has no share or right in the land in dispute. They are its bonafide purchasers for valuable consideration. They have also claimed their ownership of the suit land by way of adverse possession as well. It will not be out of place to mention here that the contesting defendants have stoutly denied all other allegations contained in the plaint and prayed for dismissal of the suit.

7. In the wake of pleadings of the parties, the trial Court framed the necessary issues for proper adjudication of the case.

8. The parties to the litigation brought on record the oral as well as documentary evidence, in order to prove their respective stands.

9. Taking into consideration the evidence on record, the trial Court dismissed the suit of the plaintiff, by virtue of impugned judgment and decree dated 22.11.2004.

10. Aggrieved by the judgment and decree of the trial Court, the appellant-plaintiff filed the appeal. Likewise, Jarnail Singh (since deceased), being represented by his LRs defendants No. 1 to 4 and others also filed cross objections. The Ist appellate Court, on ultimate analysis of the evidence on record, partly accepted the appeal of the plaintiff and partly decreed her suit declaring her as joint owner and entitled to get joint possession of 1/4th share (instead of $\frac{1}{2}$ share as claimed by her), vide impugned judgment and decree dated 1.10.2005, the operative part of which is as under:

As a result to my above discussion, this appeal No. 47 of 2004 titled as Gurmail Kaur v. Jarnail Singh etc. has merits and is hereby accepted partly. Consequently, appeal No. 47 of 2004 is Regular Second Appeal No. 3725 of 2007 4 hereby accepted partly and judgment, decree under appeal are set aside partly. Resultantly, the suit filed by plaintiff Gurmail Kaur is decreed partly declaring her as owner and entitled to get joint possession of 1/4th share in the property of village Jeeda and village Chak Jeeda, District Bathinda. However, suit of plaintiff qua property at Dabwali District Sirsa (Haryana) stand dismissed. The cross-objections No. 4 of 18.1.2005 filed by defendants/respondent Nos. 1 to 4 are also dismissed and findings of learned trial Court on issues No. 3 to 9 are affirmed.

11. The appellant-defendants did not feel satisfied with the impugned judgment and the decree of the first appellate Court and filed the present appeal. That is how, I am seized of the matter.

12. Having heard the learned Counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the appeal.

13. Ex-facie, the argument of the learned Counsel that since the trial Court decided the case on merits without discussing the evidence on record, so, the first appellate Court ought to have remanded the case for its fresh decision, is not only devoid of merit but misplaced as well.

14. It is not a matter of dispute that both the parties produced on record the oral as well as documentary evidence in order to substantiate their respective pleas. Order 41 Rule 24 CPC postulates that "where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that

the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds." Meaning thereby, as the parties have produced sufficient evidence on record, therefore, the Ist Appellate Court was well within its jurisdiction to decide the appeal on merits, as contemplated under Order 41 Rule 24 CPC. No fault can possibly be attributed to Ist Appellate Court in this relevant connection.

15. Faced with this situation, the next contention of learned Counsel that as the plaintiff is not proved to be the daughter of Nand Kaur widow of Santa Singh alias Basant Singh, therefore, the first Appellate Court fell in grave error in decreeing her suit, is again not tenable.

16. As is evident from the record that Bhagwan Singh was the original owner of the disputed property. He had four sons, namely Sardara Singh, Santa Singh alias Basant Singh, Vir Singh and Partap Singh besides three daughters Sham Kaur, Santo alias Sito and Partap Kaur. Partap Singh and Vir Singh sons of Bhagwan Singh died unmarried and issueless. Thereafter, Sardara Singh and Santa Singh sons of Bhagwan Singh became the owners and in possession to the extent of ½ share each in the suit land. As Santa Singh alias Basant Singh died on 29.6.1956, leaving behind Nand Kaur, his widow and Gurmail Kaur daughter before commencement of the Act, therefore, she (Nand Kaur) succeeded and inherited the property of her husband. Nand Kaur executed the registered Will (Ex.P1) bequeathing her share in the entire property to the plaintiff. Nand Kaur died in the year 1999. Likewise, in the wake of death of other sons of Bhagwan Singh, the property was inherited by their legal representatives. Thus, the plaintiff has claimed her ½ share, but the first Appellate Court has partly decreed her suit to the extent of ¼ share in the land in dispute.

17. The trial Court has adopted a novel method of dismissing the suit of plaintiff without any discussion or cogent finding involving serious contest between the parties relatable to their respective properties. The judgment of the trial Court is based on mere surmises and conjectures in this relevant direction.

18. On the contrary, the Ist appellate Court placed reliance on cogent evidence to conclude that plaintiff is the daughter of Nand Kaur widow of Santa Singh alias Basant Singh. The next argument of the learned Counsel for the appellant-defendants that the oral evidence of Niranjana Singh Pathi (PW2) is not sufficient to prove the relationship of plaintiff with Nand Kaur widow of Santa Singh alias Basant Singh, again has no force. PW2 maintained on oath that he knew Smt. Gurmail Kaur plaintiff, who is daughter of Santa Singh alias Basant Singh of village Jeeda. Smt. Gurmail Kaur used to call Santa Singh as father and latter has been calling Gurmail Kaur as her daughter. He (PW2) also treated both Gurmail Kaur and Santa Singh as daughter and father respectively. He has also categorically stated that Smt. Nand Kaur was widow and Gurmail Kaur is daughter of deceased Santa Singh. Such oral evidence is admissible u/s 50 of the Indian Evidence Act, 1872 (for brevity "the Evidence Act"), which posits that "when the Court has to form an

opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact." Therefore, the oral evidence of relationship is admissible in evidence as envisaged u/s 50 of the Evidence Act.

19. Not only that, the first Appellate Court has believed the oral evidence, it has also relied upon acceptable evidence in this context such as the factum of registered Will (Ex.P1) executed by Nand Kaur widow of Santa Singh alias Basant Singh in favour of the plaintiff; Ex.P2 and Ex.P3 revenue excerpts; Ex.P4 and Ex.P5 copies of ration cards; Ex.P6 copy of voter list; Ex.P7 death certificate of Nand Kaur; Ex.P8 (Ex.P8/A Punjabi translation), Ex.P13 and Ex.P14 jamabandis; Ex.P9 to Ex.P11 and Ex.D1 to Ex.D4 copies of mutations and other admissible evidence and came to the conclusion that the plaintiff is proved to be the daughter of Nand Kaur widow of Santa Singh alias Basant Singh. Therefore, to me, the first appellate Court has rightly accepted the claim of the plaintiff to the extent of 1/4 share in the suit property and negatived the plea of the defendants in this relevant direction. Hence, the contrary arguments of learned Counsel for the appellant-defendants "stricto sensu" deserve to be and are hereby reeled under the present set of circumstances.

20. No meaningful argument has been addressed by the learned Counsel for the appellant-defendants to assail the findings of the first Appellate Court. All other arguments, relatable to the appreciation of evidence, now sought to be urged on behalf of the appellant-defendants, in this relevant context, have already been duly considered and dealt with by the first Appellate Court.

21. There is another aspect of the matter, which can be viewed from a different angle. The first Appellate Court has taken into consideration and appreciated the entire relevant evidence brought on record by the parties in the right perspective. Having scanned the admissible evidence in relation to the pleadings of the parties, the first Appellate Court has recorded the findings of fact that (i) Santa Singh alias Basant Singh son of Bhagwan Singh died on 29.6.1956 leaving behind his widow Nand Kaur and daughter Gurmail Kaur-plaintiff; (ii) the plaintiff is entitled to 1/4 share in the property in dispute and (iii) the defendants have miserably failed to prove that they are owners and in possession of the entire disputed property. Such pure findings of fact based on the evidence, cannot possibly be interfered with by this Court, while exercising the powers conferred u/s 100 CPC, unless and until, the same are illegal and perverse. No such patent illegality or legal infirmity has been pointed out by the learned Counsel for the appellant-defendants, so as to take a contrary view, than that of well reasoned decision already arrived at by the first Appellate Court, in this relevant behalf.

22. Meaning thereby, the entire case revolves around the re-appreciation and re-appraisal of the evidence on record, which is not legally permissible and is beyond the scope of second appeal. Since no question of law, muchless substantial,

is involved in the second appeal, in view of law laid down by Hon"ble Supreme Court in [Kashmir Singh Vs. Harnam Singh and Another,](#), so, no interference is warranted, in the impugned judgment and decree of the first Appellate Court as contemplated u/s 100 CPC, in the obtaining circumstances of the case.

23. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

24. In the light of the aforementioned reasons, as there is no merit, therefore, the instant appeal is hereby dismissed.