

(2011) 02 P&H CK 0454

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2393 of 1981 (O and M)

Jagtar Singh and
Others

APPELLANT

Vs

Ind Kaur

RESPONDENT

Date of Decision: Feb. 17, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 41 Rule 27, 151

Citation: (2011) 162 PLR 535

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Rakesh Kumar Jain, J.

The Defendants are in second appeal against the judgment and decree of both the Courts below by which suit filed by the Plaintiff for declaration that the judgment and decree dated 05.2.1977 allegedly suffered by Surjan Singh in favour of the Defendants, is illegal and not binding upon his rights, has been decreed.

2. A few skeletal facts necessary to unfold the controversy between the parties can be gathered from the pedigree table which is reproduced below:

3. It is alleged by the Plaintiff that she is the daughter of Surjan Singh (since deceased), who was owner of land measuring 57 kanals 01 marla, situated in village Panjawa and 13 kanals 09 marla in village Bainka. Surjan Singh had lost his eye sight about six years prior to his death and his physical condition was feeble. He had brought his grandson Jarnail Singh son of the Plaintiff to his house in village Panjawa, where the Plaintiff also came and started residing with him. The Plaintiff is the only heir of Surjan Singh, who had died about 4-1/2 months prior to the filing of the suit, but the Defendants who are the sons

of Kundan Singh, obtained a decree from Surjan Singh by impersonating him in the Court, whereas the Defendants have nothing to do with the property of said Surjan Singh as they do not constitute a Joint Hindu family with him.

Therefore, the decree dated 05.2.1977 passed in Civil Suit No. 380-1 of 1976 titled as Jagtar Singh and Ors. v. Surjan Singh passed by Sub Judge, 1st Class, Giddarbaha, was challenged on the ground of fraud etc.

4. In the written statement, it was alleged that the suit is filed after a long delay, therefore, it is barred by limitation. Surjan Singh himself had executed a registered Will dated 7.10.1976 in favour of the Defendants which was registered on 13.10.1976 as they used to render service to him and he had himself suffered the decree in question dated 05.2.1977 in respect of the land in question. The Defendants claimed their right over the land in dispute not only on the basis of the decree but on the basis of the Will also.

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

1. Whether the decree dated 5.2.1977 passed by Sub Judge, 1st Class, in Jagtar Singh v. Surjan Singh is fraudulent, invalid and ineffective? OPP

2. Whether the Plaintiff has no cause of action? OPD

3. Whether the Plaintiff is estopped by her acts and conduct to file the present suit? OPD

4. Whether the suit in the present form is not maintainable? OPD

5. Relief:

6. While deciding issue No. 1, the learned trial Court had observed that:

it is proved on file beyond reasonable doubt by positive, circumstantial and indirect evidence that in fact, Surjan Singh had appeared in that case in the Court and he himself had given that statement and he had himself thumb marked that statement. The finding recorded on this issue is not challenged by the Plaintiff in appeal and as such, it had become final between the parties. It was also observed by the learned trial Court that Manohar Lal Jagga, Document Writer (DW-2) stated on oath that the Will dated 07.10.1976 (Ex.D1) was executed by Surjan Singh in favour of the Defendants, which was written by him at the instance of Surjan Singh and was read over to him who admitted it to be correct and thumb marked it.

7. Jangir Singh (DW-4) and Gurdial Singh (DW-5) are the marginal witnesses of the Will and have proved it. Besides this, Dewan K.S. Puri was examined as DW-7, who compared the thumb impression on the Will dated 07.10.1976 (Ex.D1) with the thumb impression of Surjan Singh on his statement dated 10.12.1976 in Civil Suit No. 380-1 of 1976 and concluded that the thumb impressions on the Will and the statement of Surjan

Singh are identical.

8. The learned trial Court thus observed that the consent decree was suffered by Surjan Singh in which there was no element of fraud as alleged by the Plaintiff that the decree was suffered by an imposter, although, the validity of the Will was not an issue before the Courts below, but the positive case of the Defendants was that Surjan Singh had executed a Will dated 07.10.1976 and then suffered a decree dated 05.2.1977 as he wanted the agricultural land to remain with the male lineal descendants. The Defendants have thus proved the Will as well. The learned trial Court, however, decreed the suit of the Plaintiff on the ground that family settlement can take place only in a Joint Hindu family but as Surjan Singh had never constituted a Joint Hindu family with Jagtar Singh, who though is the nephew of Surjan Singh, therefore, there was no bonafide settlement. Similar view was expressed by the learned first Appellate Court while dismissing the appeal.

9. Aggrieved against the judgment and decree of the Courts below, the Defendants have preferred this second appeal along-with an application bearing CM No. 3305-C of 1981 filed under Order 39 Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (for short, "Code of Civil Procedure ") for restraining the Plaintiff from forcibly dispossessing the Defendants. Thereafter, CM No. 2929-C of 1987 was filed by Surjit Singh son of Sohan Singh, Tara Singh son of Pal Singh, Darshan Singh son of Teja Singh and Harbhajan Singh alias Bhajan Singh son of Chanan Singh, residents of village Bainka, Tehsil Patti, District Amritsar, for being impleaded as parties on the ground that the Appellants are not in possession over the suit land situated in village Bainka as 31 kanals 17 marlas comprised in Khasra No. 74//16, 75//11/3, 20, 21 and 22, Teja Singh (now deceased) father and predecessor-in-interest of Darshan Singh applicant No. 3 was in possession as non occupancy tenant, while in respect of land measuring 2 kanals 19 marlas comprised in 74//25/1, Tara Singh applicant No. 2. was in possession. In respect of land comprised in khasra No. 75//11/2 (5-11), 11/3 (0-9) Surjit Singh is in possession and land comprised in khasra No. 74//25/1 (2-19), 75// 22 (8-0) is in possession of Teja Singh and land measuring 7 kanals 8 marlas comprised in khasra No. 74//16 is in possession of Teja Singh (since deceased), father and predecessor-in-interest of Darshan Singh and remaining 16 kanals comprised in khasra No. 75//20 and 21 is in possession of Puran Singh as per jamabandi for the year 1977-78. It was alleged that Surjit Singh and Harbhajan Singh have purchased 13 kanals 9 marlas out of the remaining land by way of sale deed dated 07.4.1982 from one Ind Kaur (Plaintiff).

10. Along-with this application, the aforesaid applicants had filed CM No. 2926-C of 1987 under Order 41 Rule 27 of CPC for placing on record a copy of jamabandi for the year 1977-78 and a copy of the sale deed dated 07.4.1982 and CM No. 2927-C of 1987 seeking exemption from filing certified copy of the sale deed dated 07.4.1982. Vide order dated 29.9.1987, both the Civil Misc. Applications i.e. Nos. 2926-C and 2927-C of 1987 were allowed as prayed. The aforesaid applicants had also filed CM No. 2928-C of 1987 for vacation of stay order dated 4.12.1981. This application was also disposed of on

29.9.1987 by modifying the order dated 4.12.1981 to the effect that whichever party is in possession will remain in possession till further orders.

11. Insofar as CM No. 2929-C of 1987 for impleadment is concerned, that was ordered to be decided along-with the main appeal vide order dated 29.9.1987. Hence, CM No. 2929-C of 1987 is also taken up for hearing.

12. No one has put in appearance on behalf of the applicants mentioned in CM. No. 2929-C of 1987. However, in the interest of justice, the application is allowed as prayed for. One more application is also filed during the pendency of the appeal i.e. CM. No. 5431-C of 1999 for correction in the memo of parties which was allowed on 24.8.1999 as in the memo of parties, father's name of the Defendants/Appellants was wrongly mentioned as Arjan Singh which was corrected as Kundan Singh.

13. The Appellants had also filed CM No. 1478-C of 2005 under Order 41 Rule 27 of CPC in order to place on record judgment and decree passed in Civil Suit No. 200-1 Smt. Ind Kaur v. Jagtar Singh and Ors. decided on 10.4.2004 in which the Will dated 07.10.1976 executed by Surjan Singh in favour of the Appellants was declared to be valid and also an order dated 31.1.2000 passed by Civil Judge (Junior Division) Pattioner in Civil Suit No. 101 of 1999 titled as Surjit Singh and Ors. v. Kundan Singh and Ors. which was dismissed in default. This application was ordered to be decided with the main case vide order passed on 16.2.2005.

14. Learned Counsel for the Appellants has argued that additional evidence sought to be produced on record are the judgment and order of the Civil Court which are otherwise per-se admissible. In view thereof, the present application is allowed and judgment dated 10.4.2004 and order dated 31.1.2000 are taken on record and are being considered in the evidence of the Appellants.

15. The Appellants had also filed an application bearing CM No. 250-C of 2006 under Order 41 Rule 27 of CPC in order to place on record decree of the learned Appellate Court dated 12.5.2005 by which the judgment and decree dated 10.4.2004 was upheld. This application was ordered to be heard with the main case vide order passed this Court on 23.1.2006. Since the document which is sought to be produced on record is judgment and decree of the learned Appellate Court upholding the judgment and decree dated 10.4.2004 have already been ordered to be taken on record. Hence, the application is allowed and the judgment and decree dated 12.5.2005 is taken on record.

16. It is pertinent to mention here that the judgments and decrees dated 10.4.2004 and 12.5.2005 have been further upheld by this Court in R.S.A. No. 1470 of 2006 titled as Smt. Ind Kaur v. Jagtar Singh and Ors. decided on 27.1.2009.

17. Reverting to the main case after disposing of the applications, argument raised by the learned Counsel for the Appellants is that the learned Appellate Court has committed patent error of law in dismissing the appeal on the ground that the decree cannot be

enforced being unregistered and it is collusive which is procured by mis-representation. It is submitted that the finding of fact with regard to mis-representation is not based upon appreciation of evidence and is only a passing remark. It is further submitted that Surjan Singh had not only suffered the decree dated 05.2.1977 regarding which the learned trial Court has held that the same is suffered by Surjan Singh himself but also bequeathed the property in dispute by way of a Will dated 07.10.1976 which was registered on 13.10.1976. It is, thus, submitted that the findings recorded by the learned Courts below are patently illegal because Surjan Singh had never challenged the decree during his life time on the ground of impersonation and the Will dated 07.19.1976 has been proved to be duly executed as it has been upheld in the subsequent suit filed by Smt. Ind Kaur.

18. Learned Counsel for the Appellants has further submitted that substantial questions involved in this appeal are:

(i) whether the proposition that transfer of property by way of a decree deviating from natural succession requires registration would apply where the owner of the property has also executed a valid Will? And (2)

(ii) whether a collusive decree which is not challenged by a person who had suffered it could be challenged by other person on the ground of fraud and registration?

19. I have heard learned Counsel for the Appellants and have perused the available record with her assistance.

20. In this case, the Plaintiff had challenged the decree dated 05.2.1977 suffered by Kundan Singh in favour of the Appellants on the ground of fraud and impersonation. However, the learned trial Court had given categorical finding of fact that Surjan Singh himself had appeared in the Court to suffer the decree. This finding is erroneously reversed by the learned Appellate Court without reference to any evidence on record much-less the fact that Dewan K.S. Puri, Handwriting Expert had even tallied the signatures/thumb impressions of Surjan Singh available on the written statement and statement made in the Court with the Will which is alleged to have been executed by him in favour of the Defendants/Appellants on 07.10.1976 and had concluded that it pertains to the same person.

21. Not only this, the learned trial Court had also made an observation after taking into consideration the statements of Manohar Lal Jagga, Document Writer (DW-3) Jangir Singh (DW-4) Gurdial Singh (DW-5) who had appeared as marginal witnesses of the Will (Ex.D-1). About the thumb impression of Surjan Singh on the written statement and the statement made in the Court in the Civil suit on the basis of voluminous evidence available on record, the learned trial Court had concluded that the decree was suffered by Surjan Singh himself and was not an act of impersonation and fraud. Therefore, in my view, the observation of the learned Appellate Court in this regard that the collusive decree was procured by misrepresentation, is patently illegal and unsustainable.

22. The learned trial Court though observed everything in favour of the Defendants but decreed the suit of the Plaintiff only on the ground that the Defendants had not constituted a Joint Hindu family with Surjan Singh, therefore, there was no question of any family arrangement or family settlement whereas the learned lower Appellate Court held that the decree being unregistered cannot be taken into consideration. In this regard, learned Counsel for the Appellants has relied upon two judgments of this Court in the case of Hari Singh v. Gurcharan Singh and Ors. 2003 (3) R.C.R. (Civil) 632 and Amar Kaur v. Paramjit Kaur 2003 (3) R.C.R. (Civil) 213 to contend that if the person against whom fraud has been played in respect of sufferance of decree does not challenge the same, then other legatee cannot challenge the same on that ground. The ground of non-registration of a decree is available to the person who had suffered the same but not raised during his life time, then it is no more available to the other legatee. It is submitted that since Surjan Singh had transferred the property in dispute by way of a Will and by way of a decree and even if decree is not registered, it would hardly make any difference as the rights would devolve upon the Appellants by way of Will. In fact, both the questions which have been raised by the learned Counsel for the Appellants are covered by the judgments cited by her.

23. In view thereof, it is held that the proposition that transfer of property by way of a decree deviating from natural succession requires registration of the decree would not be applicable where conferment of proprietary rights are also by way of a registered Will and right to challenge a decree on the ground of fraud is only available to the person against whom fraud has been played and not by a third party.

24. In view of the above discussion, the present appeal is thus, allowed and the judgments and decrees of the Courts below are set aside with costs through out