

CASE NO.:
Appeal (civil) 4366 of 2002

PETITIONER:
Amarjit Kaur & Ors.

RESPONDENT:
Karamvir Singh & Ors.

DATE OF JUDGMENT: 25/04/2006

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Challenge in this appeal is to the legality of judgment rendered by a learned Single Judge of the Punjab and Haryana High Court at Chandigarh in second appeal filed under Section 100 of the Code of Civil Procedure, 1908 (in short the 'CPC').

Background facts in a nutshell are as follows:-

One Ajit Singh was a common ancestor of the appellants and the respondents. The respondents as plaintiffs had filed a suit for declaration to the effect that they are owners to the extent of 17/24 share in the 107 Kanals and 2 Marlas of land, out of 151 Kanals 5 Marlas of land in dispute which had been allotted to their common ancestor Ajit Singh at the time of consolidation. Ajit Singh was a man of full vices, a spend-thrift person and had sold his land to one Bishan Singh without consideration and legal necessity. Joginder Singh, ancestor of the present appellants 1 to 5 and 7 had filed a suit for declaration that said sale was without consideration and legal necessity and as such void and had no effect on the reversionary rights. The said suit was decreed up to the High Court. Before this Court a compromise was arrived at between Joginder Singh and Bishan Singh in which the latter admitted that the land was ancestral property and the sale was ineffective. He, therefore, relinquished his right in the same after accepting a sum of Rs.30,000/- from Joginder Singh, the original defendant no.1. With a mala fide intent Joginder Singh initially got the mutation sanctioned in his name in relation to the entire land and, thereafter had got a portion thereof mutated in favour of his son, Harpal Singh (defendant no.2) and his wife Smt. Harjinderjit Kaur (defendant no.3). Appellant No. 2 Manraj Singh is the son of Harpal Singh. These entries, according to the plaintiffs were incorrect and had no effect on their rights as they had acquired 17/24 share in the suit land as reversioners on the death of Ajit Singh on 3.9.1986. The decree of this Court was not binding on them as they were not parties to the compromise. The plaintiffs had requested the defendants to admit their claim, but to no effect. Therefore, the suit for declaration and consequential relief of possession was filed. The suit was contested by the defendants who admitted the relationship inter se, as also the fact that the land in question was allotted at the time of consolidation in lieu of the land which was ancestral in the

hands of Ajit Singh. It was also admitted that Ajit Singh had sold the land without legal necessity and consideration and that defendant no.1 Joginder Singh had filed suit for declaration which was decreed up to the High Court, and a compromise had been affected by Joginder Singh with Bishan Singh. They also admitted that after the compromise possession was taken by Joginder Singh. However, it was submitted that the High Court had observed that the sale in favour of Bishan Singh was void and would not affect the revisionary rights of Joginder Singh after the death of Ajit Singh. Before this Court only Joginder Singh was a party and it was he, who had entered into compromise with Bishan Singh, in pursuance whereof a decree was passed. On the basis of this decree Joginder Singh claimed that he had become owner of the suit land. Joginder Singh had also incurred huge expenses for making the land fertile and had installed electricity tubewell, electric motor of 7.5 horse power and also constructed 4/5 rooms for the storage of seed, fertilizer etc. He also claimed to have grown orchard in an area of four acres and planted 600/700 eucalyptus trees. Other defendants 2 to 6 claimed to have become owners by way of decree of a Court and mutual exchanges. It was stated that in view of the decision in favour of Joginder Singh in the earlier suit, the subsequent suit was not maintainable and the decision of this Court dated 22.3.1966 operated as res judicata. It was also submitted that plaintiffs were estopped from filing suit by their own acts and conduct and the suit was barred by time and also bad for non-joinder of necessary parties. Reference was made to Order 32 Rule 3 of the CPC with regard to the appointment of guardian for the minor defendants. It was pleaded that these mandatory provisions were not complied with and the suit was bad qua the minor defendants. 13 issues were framed by the trial court which after examining evidence decided the relevant issues i.e. issues nos. 3 to 6 as quoted below against the plaintiffs.

"3. Whether sale of the suit property by Ajit Singh in favour of Bishan Singh is null and void, and if so, its effect? OPP

4. Whether plaintiffs are owners of the suit property? OPP

5. If issue No.4 is proved whether plaintiff is entitled to the possession of the suit property as prayed for? OPP

6. Whether plaintiff has no locus standi to file the present suit? OPP"

Appeal filed by the respondents was allowed by learned Additional District Judge, Jalandhar holding that Joginder Singh was entitled to the benefit of the decree in the earlier suit and the findings in relation to the above issues were reversed. In the second appeal the High Court was of the view that the only question which arises for consideration is whether the settlement arrived at between Joginder Singh (defendant No.1) and Bishan Singh would entitle Joginder Singh alone to the benefit of the decree passed in the suit filed by him against Bishan Singh. The High Court felt that no question of law was involved and accordingly dismissed it.

The High Court noticed that the admitted case was that

the alienation of their predecessor-in-interest Ajit Singh in favour of Bishan Singh was assailed by Joginder Singh alone in a suit arraying by Bishan Singh, his brothers, namely, Nirmaltej Singh and Karamvir Singh along with Ajit Singh as defendants. The suit was decreed in his favour by the High Court declaring that the sale would not affect his reversionary rights after the death of Ajit Singh for an amount in excess of Rs.1011/- and he would be entitled to take possession of the land on payment of the aforesaid amount. In appeal before this Court, Joginder Singh and Bishan Singh entered into compromise by virtue of which Joginder Singh agreed to pay a sum of Rs.30,000/- in place of Rs.1011/- which he would have been required to pay if the decree had not been modified.

There was no modification of the terms of the declaration that the sale would not affect the reversionary rights of Joginder Singh after the death of Ajit Singh which in fact would mean that the property in dispute would be inherited by all the heirs of Ajit Singh. The Trial Court fell into grave error in relation to this aspect of the case and, therefore, the first Appellate Court was justified in its view.

According to learned counsel for the appellants the basic issue was whether the compromise entered into between Joginder Singh and Bishan Singh before this Court, with regard to the ancestral property of Ajit Singh after the death of Joginder Singh would have any effect on the reversionary rights of the other heirs of Ajit Singh. It was, therefore, submitted that sale putatively due to legal necessity was entered into on 14.3.1942 but for the suit filed in 1943, the sale would have been final and binding. As a consequence of Joginder Singh's suit and appeals, thereafter the sale was treated for necessity to a limited extent. Under the compromise, (a) exclusive rights were accorded to Joginder Singh and (b) if Joginder Singh had not paid the sum in the compromise decree, the entire suit would have been dismissed and the sale would have been valid. Further, Joginder Singh was to be given entire land even before the death of Ajit Singh with full rights to consolidation, mutation and attainment of tenants. The other reversioners were party to the suit and appeal proceedings and became majors on 23.10.1959 and 17.11.1964; thus being capable of conducting their own proceedings without a guardian ad litem. They acquiesced to in the compromise decree fully conscious of their rights. The compromise decree was (a) a bona fide transaction (b) between Joginder Singh and the vendee for consideration (c) entitled Joginder Singh exclusively to possess and mutate all records and attorn all tenants (d) Joginder had acted as exclusive owner from 1966 to 1986 and beyond. He also spent huge sums of money for improvements and additions from his own funds. No other party had the means to pay for the compromise other than Joginder Singh. There was acquiescence to the decree both by the father (Vendor and Ajit Singh) and the reversioners. It was submitted that equitable principles such as estoppel, elections family settlement etc. are not mere technical rules of evidence. The ultimate aim of law is to secure justice. There are three classes of estoppel that may arise for consideration which are (1) within ambit of Section 115 of the Indian Evidence Act, 1872 (in short 'Evidence Act') (2) election in the strict sense of the term whereby the person electing takes a benefit under the transaction and (3) ratification i.e. agreeing to abide by the transaction.

A presumptive reversioner coming under any of the

aforesaid categories is precluded from questioning the transaction, when succession grants and when he becomes the actual reversioner. The principles of acquiescence may also make reversionary rights defeasible.

In response, learned counsel for the respondents submitted that at the time of Ajit Singh's death the right survived and the Punjab (Custom) (Power to Contest) Act of 1920 was in operation. It is to be noted that plea relating to acquiescence was not pleaded before any of the courts below and, in fact, there is no acquiescence as the compromise entered into between Joginder Singh and Bishan Singh has no effect on the rights of the plaintiffs. Their rights were protected by this Court in dismissing appeal of Bishan Singh against them. The relevant portion of this Court's earlier order makes this position clear. Only effect of the compromise was that by paying certain amount Joginder Singh became entitled to the possession of the suit land immediately, which otherwise could have been taken by him only after the death of Ajit Singh. Ajit Singh's land became part of his estate and the same devolved upon all the legal heirs. As rightly held by the first Appellate Court and confirmed by the High Court, Joginder Singh had no right to deny claim of other heirs on the ground that he got possession of the land from Bishan Singh on the basis of the compromise affected between them. The plaintiffs could not have been deprived of their legal rights by the compromise in question.

Rival contentions need careful consideration. It would be appropriate at this stage to take note of this Court's judgment in Giani's Ram v. Ramjilal (1969 (1) SCC 813). It was inter alia held as follows :-

"The Punjab Custom (Power to Contest) Act 1 of 1920, was enacted to restrict the rights exercisable by members of the family to contest alienations made by a holder of ancestral property. By virtue of Section 6 of the Act no person is entitled to contest an alienation of ancestral immovable property unless he is descended in the male line from the great-great grandfather of the alienor. Under the customary law in force in the Punjab a declaratory decree obtained by the reversionary heir in an action to set aside the alienation of ancestral property enured in favour of all persons who ultimately took the estate on the death of the alienor for the object of a declaratory suit filed by a reversionary heir impeaching an alienation of ancestral estate was to remove a common apprehended injury, in the interest of the reversioners. The decree did not make the alienation a nullity & it removed the obstacle to the right of the reversioner entitled to succeed when the succession opened."

It was also held that effect of such a declaratory decree is merely to declare that by the sale interest conveyed in favour of the alienee was to ensure during the life time of the alienor. The inevitable conclusion is that the property alienated reverted to the estate of the alienor at the point of his death and all persons who would but for the alienation will be entitled to inherit the same.

A bare perusal of the order of this Court while recording the compromise shows that the rights of the plaintiffs was kept in tact by dismissing the appeal of Bishan Singh against them.

If Joginder Singh had spent any money as claimed, that is a matter of adjustment when the actual allotment is made. Above being the position, there is no merit in this appeal which is accordingly dismissed. No costs.

JUDIS