

PETITIONER:
JOGINDER SINGH & ANR.

Vs.

RESPONDENT:
SMT. JOGINDERO & ORS.

DATE OF JUDGMENT: 23/01/1996

BENCH:
FAIZAN UDDIN (J)
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FAIZAN UDDIN (J)
SINGH N.P. (J)

CITATION:
1996 AIR 1654 JT 1996 (1) 467
1996 SCALE (1)501

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Faizan Uddin, J.

1. This appeal has been directed against the judgment and decree passed by the High Court of Punjab & Haryana at Chandigarh dated March 12, 1982 in Regular Second Appeal No. 172/1972 reversing the judgment and decree dated 11.1.1972 based by the Additional District Judge, Amritsar in Civil Appeal No. 307/1971 and restoring the judgment and decree dated 1.2.1969 passed by the Sub-Judge, Class II. Taran-Taran in case No. 32/1967.

2. Smt. Joginder alias Gindo and Smt. Chhindo, plaintiffs/Respondent Nos. 1 and 2 are the daughters of Smt. Soman, defendant/Respondent No. 4. Shingara Singh, plaintiff/Respondent No. 3 is sister's son of Smt. Soman. The land in suit as admeasuring 60 kanals and 17 marlas belonged to Smt. Soman. According to the plaintiffs, Smt. Soman, defendant/Respondent No. 4 made a gift of said land in favour of the plaintiffs by a registered gift deed dated April 12, 1960 with delivery of possession. The defendant No. 1 Surain Singh (who died during the pendency of the Second Appeal before the High Court and is represented by his legal representatives) and Bur Singh, defendant No.2 / Respondent No. 5 herein are tenants in respect of the suit land under defendant No. 4. Smt. Soman. It was alleged by the plaintiffs that the defendants No. 1 to 3 with the connivance of the revenue authorities got their own name mutated on April 17, 1967 in the revenue records and declined to admit the claim of the plaintiffs and, therefore, the plaintiffs instituted the suit for possession of the land.

3. The defendants No. 1, 2 and 3 resisted the plaintiffs suit by contending that Smt. Soman, defendant No. 4 after the death of her husband, Gujjar Singh, had remarried and, therefore, Smt. Soman had no subsisting right, title or interest in the property in dispute. They also denied that

the plaintiffs No. 1 and 2 are the daughters of Smt. Soman from her late husband Gujjar Singh. The relationship of the plaintiff No. 3. Shingara Singh, with Smt. Soman and her husband was also denied. They further took the plea that no gift deed as alleged by the plaintiffs was ever executed in their favour and even if Smt. Soman had executed any such deed of gift the same was not binding on the defendants as Smt. Soman had no subsisting right in the said land. They took the stand that they were cultivating the land as owners thereof and not as tenant.

4. However, at the trial the defendants admitted that the plaintiffs No. 1 and 2 were the daughters of Smt. Soman and accordingly there was no contest on issue No. 1 which related to the relationship of the plaintiffs with Smt. Soman. Similarly the parties gave up the dispute with regard to the previous litigation in respect of the suit property. However, on a close analysis of the oral and documentary evidence adduced by the parties the trial Court recorded the finding that the defendants had failed to establish that Smt. Soman, defendant No. 4 had remarried after the death of her former husband. Gujjar Singh, and, therefore she was not divested of her right, title and interest in the property. The trial Court also recorded the finding that Smt. Soman had made a gift of the suit land in favour of the plaintiffs by the registered deed of gift dated April 12, 1960 and that the defendants were recorded as tenants under Smt. Soman, defendant No. 4 in Khasra Girdawari in the year 1961-62 and 1963-64 onwards and they being the tenants of Smt. Soman were estopped from contending that they were in possession of the land in their own rights as owners. On these findings the learned Trial Judge decreed the plaintiffs suit for possession. On appeal by the defendant No. 1, Surain Singh (since deceased) learned Additional District Judge reversed the aforementioned findings recorded by the Trial Court and dismissed the plaintiffs suit with costs. Before the appellate Court the defendant Surain Singh did not challenge the findings with regard to the relationship of the plaintiffs with Smt. Soman nor he disputed the factum of the gift of the suit land to the plaintiffs. The only ground canvassed before the appellate Court was that since Smt. Soman had remarried after the death of her husband Gujjar Singh, she had ceased to be the owner of the land by reason of which the alleged gift conferred no title on the plaintiffs. The appellate Court took the view that Smt. Soman had appeared before the Revenue Officer and admitted her marriage with Ajaib Singh as contended by the defendants. In recording the finding, the appellate Court relied on Ext. D.3 which is the birth entry of one Smt. Amar Jito, a daughter born to Ajaib Singh and in the remarks column of which name of Smt. Soman is mentioned as mother of Amar Jito which according to the first appellate court proved that Smt. Soman had remarried with Ajaib Singh and on the basis of the aforesaid evidence set aside the findings recorded by the Trial Court by holding that remarriage of Smt. Soman was established. On further appeal by the plaintiffs the High Court in second appeal, disagreed with the first appellate Court and found favour with the findings recorded by the trial Court and, therefore, set aside the findings recorded by the first appellate Court and restored the judgment and decree passed by the trial Court against which this appeal has been preferred under Article 136 of the Constitution by the legal representatives of the deceased Surain Singh.

5. Learned counsel for the appellants taking support from the findings recorded by the first appellate Court assailed

the view taken by the High Court by contending that the High Court committed a serious error in holding that Late Surain Singh and Bur Singh being tenants under Smt. Soman, were estopped from challenging the title of the owner. He also submitted that there was convincing evidence to establish remarriage of Smt. Soman by reason of which she had lost all rights in the property in suit and had no right to transfer the same to the plaintiffs. After going through the record and the impugned judgment we find no merit in the aforementioned submissions. It may be noticed that the first appellate Court had reversed the finding of the trial Court with record to the remarriage of Smt. Soman on the basis of Ext. P.4 which is said to be the copy of mutation in the revenue record. It appears that the said mutation was effected on the basis of certain statement alleged to have been made by Smt. Soman. But there is no statement as such on record to show the admission on the part of Smt. Soman that she had remarried with Ajaib Singh. It appears that the first appellate Court took the copy of mutation as statement of admission on the part of Smt. Soman and relying on the said copy of mutation Ext. P.4 took the view that Smt. Soman had admitted in the mutation that she had entered into a marriage with Ajaib Singh. The first appellate Court also took into consideration Ext. D.3 which is the birth entry of one Amar Jito who is said to be the daughter born to Ajaib Singh and in the remarks column thereof the name of mother of Amar Jito is given as Soman. There is no evidence as to who made this entry. There is also no evidence to suggest that the entry relates to the daughter born out of the alleged wedlock between Ajaib Singh and Soman. There is no evidence that entry of Soman in Ext.D.3 is the same lady as defendant / Respondent No. 4. In these facts and circumstances and particularly in view of the evidence of Mohinder Singh. PW 5 the real brother of Ajaib Singh who stated that his brother Ajaib Singh never married Smt. Soman, it is difficult to accept the view taken by the first appellate Court.

6. Late Surain Singh and Respondent Bur Singh did not seriously dispute that they were not tenants under Smt. Soman in respect of the land in dispute and adduced no evidence in that behalf. On the contrary Khasra Girdawari Ext.P.6 clearly indicated that the deceased Surain Singh (who is represented by his legal representatives in this appeal) and Bur Singh were tenants under Smt. Soman with regard to the land in suit. This being the position the tenants could not be permitted to deny or dispute the title of the owner. This is a settled view that having regard to the provisions of Section 116 of the Evidence Act no tenant of immovable property or person claiming through such tenant shall, during the continuance of the tenancy, be permitted to deny the title of the owner of such property. In this connection it would be relevant to make a reference to the decision of this Court in Veerraju Vs. Venkanna [1966 (1) SCR 831 (839) = AIR 1966 SC 629] wherein this Court, with reference to the decision of Privy Council took the view as under:-

"A tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord".

7. In the facts and circumstances stated above, we find no merit in this appeal. Consequently, the appeal is dismissed with costs throughout.

JUDIS