

PETITIONER:
GURDIT SINGH (DEAD) THROUGH LRS. & ORS.

Vs.

RESPONDENT:
NIRMAL SINGH & ANR.

DATE OF JUDGMENT: 09/11/2000

BENCH:
A.P. Misra, & N. Santosh Hegde,

JUDGMENT:
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SANTOSH HEGDE, J.

Leave granted.

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Being aggrieved by the judgment of the High Court of Punjab & Haryana at Chandigarh dated 16.3.1999 made in E.S.A. No.1720/98, the appellants have preferred the above noted appeals. Brief facts necessary for disposal of these appeals are as follows :-

Originally the suit lands belonged to Gobind Mal, Brij Lal, Vassan Mal and Baldev Singh. Their attorneys sold part of the lands owned by the abovesaid persons in favour of one Smt. Yashodha Bai and Raj Rani by means of two sale-deeds. The said Yashodha Bai and Raj Rani agreed to sell the said property in favour of Inder Singh and Gurdit Singh by way of two sale agreements. On failure of the said ladies to complete the sale deeds, said Inder Singh and Gurdit Singh (predecessors-in-interest of the present appellants herein after to be referred to as the appellants) filed two suits for specific performance of their agreements. Almost simultaneously, the respondents herein also filed two suits claiming to be the purchaser of the suit lands against Ambi Bai, widow of Gobind Mal and Yashodha Bai. The trial court viz., Subordinate Judge, Kapurthala, dismissed both the suits of the respondents and the suits of the appellants were decreed, and the appellants obtained the sale deeds in regard to the suit lands executed through the Court Commissioner. The respondents herein, however, challenged the said decree of specific performance granted in favour of the appellants by way of an appeal before a learned Single Judge of the High Court of Punjab & Haryana. The learned Single Judge who heard the appeal, allowed the appeal and set aside the judgments decrees in favour of the appellants holding the original plaintiffs in whose favour the trial court granted the decree, were not ready and willing to perform their part of the contract. Thus, the decrees of the trial court in those suits came to be reversed and the suits dismissed. The plaintiffs in those proceedings, namely, the present appellants filed Letters Patent Appeals before the Division Bench of the said High Court which, while allowing the Letters Patent Appeal partly, held the

claim of the appellants in regard to the share of Gobind Mal cannot be sustained, hence, rejected and dismissed the suit in regard to the share of Gobind Mal since the attorney of Gobind Mal had entered into the agreement of sale after the said Gobind Mal had died. Therefore, the appellants did not derive any title from the agreement executed by the attorney of Gobind Mal, however, their claim for the rest of the property was decreed.

After the judgment in the L.P.A., the respondents herein moved application for restitution urging that since the decree which was executed in favour of the appellants is modified to the extent of Gobind Mals share, there should be restitution as contemplated under Section 144 of the Code of Civil Procedure to that extent and they be put in possession of that part of the suit property. The trial court and the lower appellate court dismissed the said application holding that the respondents did not have the locus standi to make/maintain the said application since their claim to the suit land including that of Gobind Mals share was rejected by the dismissal of their suit. In appeal, the High Court by the impugned order, has held that the respondents being the purchasers of the share of Gobind Mal and having purchased the same from the widow Ambi Bai, they have the locus standi to make the application under Section 144 C.P.C. It also held that said Ambi Bai never challenged the sale made by her in regard to the share of Gobind Mal on any ground much less that the same was without consideration. Therefore, on the reversal of the judgment and decree, the law cast an obligation on the parties to the suit who received the benefit of the erroneous judgment to make restitution to the other party for what it had lost and further held that it is the duty of the court to enforce that obligation. On this basis, it directed the remand of the case to the Executing Court to determine the share of Gobind Mal in the suit land and the proportionate price thereof and on such determination, the appellants before it i.e. the respondents before us be asked to deposit such determined amount and thereafter the Executing Court should pass orders in regard to the corrections to be made in the sale deed to that extent, and consequential corrections in the registered documents and the revenue records be made. However, the High Court rejected the prayer of the respondents for possession on the ground that they were not dispossessed pursuant to the reversed decree.

In these appeals, the appellants contend that the respondents having failed in their suits, it is not open to them to file an application for restitution because they have no right or title even in regard to the share of Gobind Mal in the suit land. They contend that the claim of the respondents is barred by the principle of res judicata, hence, the High Court was wrong in interfering with the findings of the courts below.

Per contra, on behalf of the respondents, it is contended that the modification of the decree by the Letters Patent Bench was done at the instance of these respondents who had preferred the said Letters Patent Appeals. Consequently, the said modified judgment became inter-partes hence to effectuate the modification of the decree, it had become necessary for the respondents herein to move an application for restitution hence such an application was maintainable by them. They also justify the observations of the High Court made in their favour as to the purchase of a

suit property by them from Gobind Mals widow Ambi Bai, so also the directions given by the High Court as to the deposit of the consideration amount equivalent to the share of Gobind Mal in the suit property, by them. They contended that it is the interest of equity and justice that such directions, as has been given by the High Court, be maintained. They also contended that they are entitled to be put in possession of the land equivalent to the share of Gobind Mal.

We have carefully considered the arguments of the parties. From the narration of the facts noted hereinabove, it is clear that neither Yashodha Bai, Raj Rani nor Ambi Bai widow of Gobind Mal has taken any interest in this litigation. It was a dispute inter se between the appellants and respondents herein. When the appellants suit was decreed, it was the respondents herein who challenged the said decree inspite of their suits being dismissed and got the decree of the trial court reversed by the Single Judge of the High Court. Thereafter, when the LPA was preferred before the High Court, it is only the respondents herein who were parties to the said appeal. Therefore, it could be said that learned Single Judges judgment dismissing the suit and the judgment of the Letters Patent Bench modifying the decree of the trial court were done in the proceedings to which the appellants and the respondents alone were parties. Therefore, such proceedings should be deemed to be inter partes. Hence, there is substantial force in the argument of the respondents that since the ultimate decree of the Letters Patent Bench was made in a proceeding to which they alone were parties, an application on their behalf for restitution to the extent of modified decree must be held to be maintainable on their behalf because they are the other party referred to in Section 144 of the C.P.C.

It is to be noted that neither in the appeal before the Single Judge nor in the Letters Patent Appeal before the Letters Patent Bench, it was ever contended that these respondents have no interest in the suit lands since their suits were dismissed, nor was it contended the proceedings initiated by them ought to be dismissed as being not maintainable. In the said proceedings both Single Bench and the Appellate Bench accepted these respondents as necessary parties and it is at their instance the judgments were delivered in those proceedings. Therefore, it is trite to say for the purpose of getting the modification of decree pursuant to the judgment of the Letter Patent Bench these respondents would become stranger to the proceedings. We agree with the High Court that the respondents are proper parties to move the restitution application to bring the original decree in conformity with the judgment of the Letters Patent Bench. That is to the extent of deleting the share of Gobind Mal from the registered sale deed and making necessary consequential changes in the other relevant documents. In this regard, it is worthwhile to refer to the observations of this Court in the case of Lala Bhagwandas vs. Lala Kishen Das, 1953 SCR 559 wherein this Court held:

It is the duty of the Court to enforce that obligation unless it is shown that restitution would be clearly contrary to the real justice of the case.

In the instant case, when it is established that the

appellants did not have right title or interest in the property falling to the share of Gobind Mal, the benefit so obtained by them by the judgment which is reversed must be changed to that extent by bringing necessary changes in the original decree. This is because of the principle of the doctrine of restitution that on the reversal of a decree in appeal, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what it had lost. Such obligation arises automatically on the reversal or modification of the decree from which a party has obtained certain benefits. In the instant case, we have already held that the respondents will be the other party as contemplated under Section 144 of CPC though not for the purpose of getting their right established in the suit property but to the extent of seeing that the appellants did not get a title to the share of Gobind Mal which they obtained by virtue of the erroneous decree which later came to be reversed. Therefore, we are in agreement with the judgment of the High Court that the Executing Court should determine the share of Gobind Mal and its value and thereafter carry out necessary corrections in the sale deed executed in favour of the appellants by virtue of the decree of the trial court and also make necessary changes in the concerned records including that of the revenue records.

By this, we do not hold that the respondents have established any title to the share of Gobind Mal nor are they entitled to seek restitution of the possession of that share of property because as per the finding of the High Court, with which we agree, these respondents have not been dispossessed by virtue of that decree. The title to the share of Gobind Mal and entitlement to possess the same will have to be left open to be adjudicated in other proceedings if any. For the reasons stated above, these appeals fail and are dismissed.

SLPÂ©Nos.18813-14/99, Cont.P.Â©Nos.
196-97/2000 in SLPÂ©Nos.10616-17/99)

In view of our judgment rendered in C.A.@ SLPÂ©No.10616-17/99, these Special Leave Petitions and Contempt Petitions do not survive for consideration, hence the same are also dismissed.