

CASE NO.:
Special Leave Petition (civil) 15106 of 2006

PETITIONER:
Shakuntala

RESPONDENT:
Lt.Col.Mukhtiar Singh & Ors

DATE OF JUDGMENT: 07/04/2008

BENCH:
A.K. Mathur & Aftab Alam

JUDGMENT:
JUDGMENT

O R D E R
NON-REPORTABLE

SPECIAL LEAVE PETITION (C) NO.15106 OF 2006

1. A sister (plaintiff\026petitioner) is in conflict with her brothers (defendants\026respondents) over certain landed properties in Rohtak which, according to her belonged to their father Captain Sardar Singh and which after his demise devolved on his children in equal shares, her own share being one-sixth. The brothers resisted her claim by taking the plea that the suit properties, though acquired in the name of their father, were in reality Joint Hindu Family properties and had come in their exclusive share on the basis of a settlement among the co-parceners comprising the father and the five sons. Their sister had no right or interest in the suit properties. The Trial Court on consideration of a vast volume of evidences recorded all the findings in favour of the defendants and against the plaintiff. In appeal, the First Appellate Court affirmed the findings of the Trial Court. In Second Appeal, the High Court considered the plaintiff's case and her challenge to the decrees of the Courts below in some detail but came to find and hold that the appeal did not raise any question of law, much less a substantial question of law. The High Court, accordingly, dismissed the second appeal at the admission stage. This Special Leave Petition is filed against the order of the High Court and the Courts below.

2. The plaintiff filed a suit seeking permanent injunction restraining the defendants from interfering with her joint possession of the suit properties and from transferring the suit properties or changing their nature in any way. It is significant to note that the plaintiff did not pray for any declaration as to her title in the suit properties nor is there any clear assertion on her behalf of being in possession of the suit properties as one of the co-sharers.

3. The defendants in their written statement strongly refuted the plaintiff's claim. According to the defendants, the suit property was purchased after the marriage of the plaintiff in the year 1951. Though the properties were acquired in the name of their father Captain Sardar Singh, the consideration money came from the Joint Hindu Family Fund and the suit properties were always treated as part of the common hotch-pot. There was a family settlement between the father and the sons in

which he was given some other village properties in lieu of his share in the suit properties and the suit properties came in the exclusive share of the five sons. Later on, in the year 1971, one of the sons filed a suit impleading the father and the other four brothers as defendants praying for a declaration that the plaintiff and his other four brothers (defendant nos. 2 to 4 in the suit) were owners in possession of the suit properties. In the written statement filed by him Captain Sardar Singh accepted the claim and a decree was accordingly passed on 4.3.1982. Captain Sardar Singh thus voluntarily and willingly suffered the decree by which the suit property was held to be in the exclusive ownership and possession of his five sons. He lived for a long-time after the decree was passed and before his death he also executed a will leaving the suit properties to his sons.

4. In light of the pleadings of the parties the Trial Court framed a number of issues of which 1,3 and 4 are significant; those are as follows:-

"1. Whether the impugned decree dated 4-3-1982 is illegal, null, void and a sham transaction as alleged? OPD.

2. xxx xxx xxx xxx

3. Whether the suit property was purchased by the father of the plaintiff and defendants, Capt. Sardar Singh, as Karta of the J.H.F.? OPD.

4. Whether deceased Sardar Singh had executed any valid will in respect of his property as alleged? If so, its effects? OPD".

5. xxx xxx xxx xxx

6. xxx xxx xxx xxx

7. xxx xxx xxx xxx"

5. Both sides led evidences in support of their respective cases. It is, however, significant to note that the plaintiff herself did not come to depose before the Court and in her place her husband holding power of attorney on her behalf came as one of the plaintiff's witness. On a consideration of the entire evidence the Trial Court recorded its findings on the aforesaid issues in favour of the defendants and against the plaintiff. In appeal the judgment was affirmed and the second appeal too preferred before the High Court, as noted above, was dismissed.

6. Before this Court no one appeared on behalf of the defendants - respondents. The plaintiff appeared in person but she did not make any oral submissions, instead she filed a long written submission.

7. In the written submission the Court is told that her father was strongly opposed to the custom of dowry and ardently campaigned against it. Consequently, at the time of the plaintiff's marriage he did not give her anything by way of dowry. The implication is that she must have her due share in her father's properties.

8. Further, in the written submission an attempt is made to reappraise the evidences all over again and to point out that the Trial Court and the First Appellate Court arrived at wrong and incorrect findings of fact. The decree in the earlier suit and the

Will executed by Captain Sardar Singh in favour of the sons are assailed on the very same grounds which were considered by the Courts below and rightly rejected.

9. On going through the judgments and orders of the Courts below, the other materials on record and the written submission submitted by the plaintiff we, unfortunately, find that there is absolutely no scope for any interference in this matter. The Special Leave Petition is, accordingly, dismissed but with no orders as to costs.

JUDIS