

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5806 OF 2008

Dalip Kaur (D) Thr. Lrs. & Ors. ..Appellants

Versus

Ram Kishan (D) Thr. Lr(s). & Ors. ..Respondents

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

1. This appeal is directed against the judgment dated 22.09.2004 passed by the High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal No. 551 of 1982.

The appellants herein are the original defendants. Respondent no.1 in this appeal, namely, Ram Kishan (now dead and represented through his legal heir) filed a suit for possession as the owner of the 1/3rd share of the suit property against the contesting defendant Nos. 1 and 2 (appellants herein). The trial Court decreed the suit. The first appellate Court reversed the judgment and decree of the trial Court and dismissed the suit. The High Court set aside the judgment of the first appellate Court

and affirmed the judgment of the trial Court. Consequently, the suit came to be decreed by the High Court.

2. Brief facts leading to this appeal are as under:

Harnam Singh was the original owner of the property. He died on 12.11.1934, leaving behind his wife Prem Kaur and three daughters, namely, Basant Kaur, Dalip Kaur and Raj Kaur. After the death of Harnam Singh in the year 1934, Prem Kaur succeeded to the property in question as per the prevailing custom in the area. She executed a gift deed on 19.09.1951 in favour of three daughters, namely, Basant Kaur, Dalip Kaur and Raj Kaur to the extent of $1/3^{\text{rd}}$ each. Basant Kaur, the first daughter of Harnam Singh and Prem Kaur expired on 25.03.1975, leaving behind her husband – Ram Kishan s/o Telu. Basant Kaur had executed a will in favour of her husband – Ram Kishan. Based on the said will, he filed a suit for possession of $1/3^{\text{rd}}$ share in the property.

It is the case of the defendants that upon the death of their sister Basant Kaur, the suit property devolved on heirs of her father Harnam Singh; since they are the only heirs of their father, they are entitled to the property as reversioners.

3. There is no dispute with regard to the relationship between the parties. The only question to be decided in this appeal is, as to whether the trial Court and the High Court are justified in concluding that Basant Kaur was entitled to 1/3rd share in the property of Prem Kaur, and consequently, as to whether the plaintiff being the husband of Basant Kaur is entitled to the said 1/3rd share.

4. Indisputably, the suit property was gifted by Prem Kaur by executing a registered deed in favour of her three daughters, namely, Basant Kaur (wife of the contesting respondent) and Dalip Kaur and Raj Kaur (defendant nos. 1 and 2) on 19.09.1951 in equal shares. The possession of the property was also delivered to them. Mutation no. 1555 was sanctioned on 26.6.1952 in their favour respectively. The gift deed, as well as, the consequent mutation are not questioned by anybody at any point of time.

5. The husband of Prem Kaur, viz. Harnam Singh, expired in the year 1934. The parties are Hindus. The properties are situated at Punjab. It may be noted at this point that though the Benaras school of Mitakshara law covers practically the whole of North India, Punjab is an exception, since here the Mitakshara

law has been modified considerably by custom on certain points. The whole matter is viewed keeping in mind customary Hindu law prevailing in the state of Punjab during the relevant period of time.

6 Prem Kaur, being the mother of Basant Kaur, Dalip Kaur and Raj Kaur, gifted the properties situated at Manauli, tehsil Kharar in favour of her three daughters. Prem Kaur had a limited estate in the property. Despite the same, the three daughters did not object to the alienation. On the contrary, they accepted the gift and got their names mutated in the revenue records.

7. Learned author Sir Dinshaw Mulla, while commenting in his book *Hindu Law* (22nd edition, §191) mentions that a reversioner, whether male or female, who consents to an alienation (including by way of gift) by a widow or other limited heir made without legal necessity, or to an invalid surrender, and transferees from him, are precluded from disputing the validity of the alienation, though he may have received no consideration for his consent.

In §192, it is observed by the learned author that where a widow or other limited heir enters into a family arrangement or a compromise which involves an alienation of the estate, the reversioner who has been a party to and has benefitted from the

transaction is precluded from questioning the alienation, and so are his descendants. There is no question in a case of this kind of a transfer of *spes successionis* by the reversioner. The reversioner, being a party to a transaction cannot repudiate it.

This Court in the case of *Krishna Behari Lal v. Gulabchand & Ors.*, (1971) 1 SCC 837, has held that where a widow entered into a compromise with a presumptive reversioner and was accepted as the absolute owner of a portion of the properties, and gave up her claim in the remaining properties, the presumptive reversioners who themselves ultimately became the reversioners were estopped from challenging the transaction. It was held by the Supreme Court that the settlement could also be considered as a family arrangement binding on the parties.

8. In the matter on hand, on facts we find that though the properties were gifted by Prem Kaur in favour of her three daughters, the said gift by her as a limited owner was treated by the three daughters, who were the only legal representatives to their parents, as a surrender of properties by their mother in their favour. We find that the alienation by way of gift by Prem Kaur is more in the nature of a family arrangement, inasmuch as

she must have intended to avoid any future disputes after her demise. All the three daughters are beneficiaries of such arrangement. As mentioned supra, all the three daughters got their names mutated by Mutation No. 1555 sanctioned on 26.6.1952. The Court leans strongly in favour of family arrangements/alienations in favour of all legal representatives, to bring about harmony in the family and to do justice to its various members and avoid future disputes. We also find that the alienation by way of gift by the mother in favour of the three daughters as far back as 1951, under which all daughters were given equal shares in the property, and by which the mother relinquished all her rights in favour of the three daughters, was permissible under the prevailing customary law. Prem Kaur's three daughters accepted such agreement with a bona fide intention. Prem Kaur also did not think of her personal advantage while settling the properties among her three daughters equally, bona fide. In this view of the matter, we affirm the decision of the High Court, which, approving the judgment of the Trial Court, decreed the suit inasmuch as the late Ram Kishan, being the plaintiff, was held to be entitled to get possession as owner of 1/3 of the property.

9. Hence, the appeal stands dismissed.

.....J.
[N.V. RAMANA]

NEW DELHI;
SEPTEMBER 27, 2018.

.....J.
[MOHAN M. SHANTANAGOUDAR]