SMT. SAWARNI

v.

SMT. INDER KAUR AND ORS.

AUGUST 23, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

CODE OF CIVIL PROCEDURE, 1908 :

Suit for declaration of title : Plaintiff claimed herself and her sister to be daughters of the owner of land in dispute—Claim also based on Will executed by their mother and the succession certificate issued by Court—Alleged that defendants 1 to 4 trespassers—Defendants 1 to 4 claimed to have bonafide purchased land from the daughter of owner's brother, alleging to be second daughter of owner and also having mutation entry in her name—Trial Court allowing Suit—Holding Plaintiff and her sister to be daughters of the owner and defendants to be trespassers—First Appellate Court reversing decree based on mutation entry—High Court dismissing appeal in limine—On Appeal, Held—First appellate Court could not have reversed decree of Trial Judge without setting aside finding that plaintiff's sister was the second daughter of owner—Mutation—Does not convey title—Relevant only for purposes of land revenue.

Succession Act, 1925—Succession certificate—Issued on basis of Will—Not challenged—Held—Cannot be ignored.

Appellant-Plaintiff filed a suit for declaration of title and possession of certain land. It was the admitted fact that the owner of the suit land died, leaving behind his widow, K, and two daughters one of whom was S. The plaintiff alleged the suit land was willed by K in favour of S and R. After the death of K, on the basis of the Will, a Succession Certificate was issued by a Civil Court in favour of the plaintiff and R, who were entitled to half the share each in the suit property. It was alleged that R was not heard of but defendant Nos. 8 & 9 were her sons and defendant No. 7 her husband, who were together entitled to R's half share in the property. The plaintiff alleged that 'I', defendant No. 5 forcibly occupied a portion of the disputed property and subsequently wrongfully sold it to defendant Nos. 1 to 4, who were trespassers.

A The Trial Judge, while allowing the suit, held the Plaintiff and R to be the daughters of G, on the basis of the Will and Succession Certificate issued under the Indian Succession Act, 1925. He further held that 'I' was the daughter of the brother of G and not of G. Furthermore, since 'I' did not have any title, she could not convey a valid title to defendant Nos. 1 to 4, who were trespassers.
B

Appeals were filed before the First Appellate Court by I, claiming to be the daughter of G, and by the defendants 1 to 4 who claimed to be *bonafide* purchasers of Suit land from 'I'. The First Appellate Court, without setting aside the finding of fact of the Trial Court that R and not C 'I' was the second daughter, reversed the decree of the trial judge. It held that since mutation in revenue records was in the name of 'I', she was entitled to sell her share of the land and consequently, Defendant Nos. 1 to 4 derived a valid title from 'I'. The High Court dismissed the Second Appeal in limine, against which Order the present Appeal by Special Leave was filed by the Plaintiff.
D

The Appellant contended that the first appellate court erred in concluding that the mutation entry in favour of 'I' could convey valid title to her, which she could consequently convey to defendant Nos. 1 to 4. It ought to have considered the Will executed by K in favour of the plaintiff E and R, and the succession certificate issued by the civil court on that basis under the Indian Succession Act. It was also contended that the first appellate court could not reverse the decree of the Trial Judge without setting aside the finding of fact of the Trial Judge that the Plaintiff and R were the two daughters of G. It was also contended that the High Court committed an error of law in dismissing the Appeal in limine.
F

Allowing the Appeal, this Court

HELD : 1.1. The judgment of the lower appellate court reversing the decree of the trial judge, without setting aside the finding of fact of the G Trial Judge that R was the second daughter of G, and the judgment of the High Court dismissing the second appeal in limine, are unsustainable in law. [170-C-E; 171-F]

1.2. The first appellate court has erred in concluding that 'I' had a valid title in the property of G, without coming to a positive finding that H 'I' and not R was the second daughter of G, since the main question that

arose for consideration before the trial court was whether R or 'I' was the daughter of G. [171-F-H] A

1.3. Non-consideration by first appellate court of oral evidence led by the parties before the trial court as to the second daughter of G vitiates its ultimate conclusion on the question whether R or 'I' was the daughter of G. [172-C-D] B

1.4. The first appellate court erred in holding that the Plaintiff could not have filed the suit in question, claiming half interest for herself and claiming half interest in favour of husband and sons of R. [171-C-D]

C

2. Mutation of a property in revenue record does not create or extinguish title nor does it have any presumptive value on title. It only enables a person in whose favour mutation is ordered, to pay the land revenue in question. The first appellate Court has erred in concluding that mutation in favour of 'I' conveys title in her favour. This erroneous conclusion has vitiated the entire judgment. [172-A-B] D

3.1. The first appellate court has committed a serious error of law in not considering the Will drawn in favour of the Plaintiff and R, and the succession certificate issued by a Civil Court on that basis under the Succession Act, 1925, which conclude the issue in favour of the Plaintiff. Rights flowing from the Will and the succession certificate cannot be ignored, especially when no attempt has been made by defendant nos. 1 to 4 to annul the certificate on the grounds available under the Act. [172-D-F] E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10987 of 1996. F

From the Judgment and Order dated 22.11.94 of the Punjab & Haryana High Court in R.S.A. No. 1253 of 1994.

A.S. Sohal and Sanjeev Malhotra for the Appellant.

G

Seeraj Bagga, Ms. S. Bagga and Ms. Tanuj Bagga and C.S. Ashri for the Respondents.

The Judgment of the Court was delivered by

PATTANAIK, J. Leave granted. H

A This appeal by special leave is by the plaintiff against the judgment and decree of the High Court of Punjab and Haryana in Regular Second Appeal No. 1253 of 1994 dismissing the second appeal in limine, thereby confirming the judgment and decree of the Additional District Judge in Case No. 66 of 1986.

B The plaintiff filed the suit for declaration of title and possession over the disputed land. It was alleged in the plaint that one Gurbax Singh was the admitted owner of the land in question and he died leaving behind his widow Gurdip Kaur and daughters Swarni, the plaintiff, and Roori @ Kirpal Kaur. Said Gurbax Singh purchased the land in question from one C Dhara Singh under a registered sale deed dated 5th September, 1958. Widow Gurdip Kaur died on 14th April, 1968 and on her death plaintiff and Roori succeeded to the disputed land in question. Gurdip Kaur also had executed a Will on 29th February, 1968 in favour of her two daughters the plaintiff and Roori. Plaintiff and Roori had obtained a succession D certificate claiming to be the legal heirs of Gurdip Kaur from the Civil Court on 4th April, 1975. Said Roori was not heard of and did not claim any interest in the disputed property, but defendant Nos. 8 and 9 are the sons of said Roori and defendant No. 7 is her husband and, therefore, in the property of Gurbax Singh, plaintiff as well defendant Nos. 7 to 9 are E the successors in interest and are entitled to share half and half. It was also alleged that defendant Nos. 5 and 6 without having any interest in the property forcibly occupied a portion of the disputed property taking advantage of the absence of plaintiff from the suit village and, therefore, the plaintiff filed the suit for the relief as already stated. It was also averred in F the plaint that defendant No. 1 claimed to have purchased the property from defendant No. 5 - Inder Kaur and said defendant No. 5 claiming herself to be one of the daughters of Gurbax Singh had executed the sale deed in question. Plaintiff contended that defendant No. 5 is the daughter of Harnam Singh brother of Gurbax Singh and not daughter of Gurbax Singh as alleged and, therefore, she had no title to the property to pass on G in favour of defendant No. 1 under the registered sale deed in question.

Defendant Nos. 5 and 6 in their written statement though admitted plaintiff to be one of the daughters of Gurbax Singh, but pleaded that the other daughter of Gurbax Singh is Inder Kaur, the defendant No. 5 and H Roori @ Kirpal Kaur was not the daughter of Gurbax Singh. The execution

of Will by Gurdip Kaur, widow of Gurbax Singh was also denied and it was averred that the said Will is a forged and fictitious document. The defendants also denied the factum of obtaining a succession certificate by the plaintiff and said Roori. It was thus contended that since Inder Kaur had half share in the disputed property being daughter of Gurbax Singh, she executed the sale deed in favour of defendant Nos. 1 to 4 and defendant No. 6 on receipt of valuable consideration. Thus, the possession of defendant Nos. 5 and 6 or defendant Nos. 1 to 4 is that of a true owner and they cannot be held to be trespassers. Defendant Nos. 1 to 4 filed a separate written statement and took the same stand as that of defendant Nos. 5 and 6. It was also averred in the written statement that the land in question had been mutated in favour of plaintiff and Inder Kaur which establishes the rightful ownership of defendant No. 5. Defendant Nos. 7 to 9 filed a written statement admitting the plaintiff's claim. On these pleadings the learned trial Judge framed as many as 8 issues and recorded the following findings:

(I). Gurbax Singh was the owner of the disputed property.

(II). Roori @ Kirpal Kaur was the other daughter of Gurbax Singh apart from plaintiff and Inder Kaur, defendant No. 5 was not his daughter.

(III). Inder Kaur in fact is the daughter of Harnam Singh, brother of Gurbax Singh.

(IV). Smt. Gurdip Kaur executed a Will dated 29th February, 1968 in favour of her two daughters, the plaintiff and Roori @ Kirpal Kaur.

(V). Mutation of the property in the name of the plaintiff and Inder Kaur does not convey any title in favour of said Inder Kaur.

(VI). A succession certificate had been issued in favour of the plaintiff and Roori to succeed the estate of Gurdip Kaur.

(VII). The sale deed executed by defendant No.5 - Inder Kaur, in favour of defendant Nos. 1 to 4 did not convey any title since Inder Kaur herself had no title to the property.

(VIII). Defendants 1 to 4 cannot claim to be *bona fide* purchasers of the disputed property.

(IX). The valuation of the suit for the purpose of court fee and

A jurisdiction is proper.

(X). The possession of defendant Nos. 1 to 4 is that of a trespasser and plaintiff is entitle to file the suit for recovery of possession.

B With these findings the suit having been decreed, the defendant Nos. 1 to 4 preferred an appeal which was registered as Civil Appeal No. 98 of 1985/1992. Defendant Nos. 5 and 6 also preferred an appeal which was registered as Civil Appeal No. 66 of 1986 and both the appeals were disposed of by a common judgment by the Additional District Judge, Amritsar. The learned Additional District Judge came to the conclusion C that plaintiff could not have filed the suit so far as half share of Roori is concerned. He also came to the conclusion that the Will or the succession certificate is of no consequence in establishing whether the Roori is one of the daughters of Gurbax Singh. With this conclusion, he set aside the judgment and decree of the trial court so far as half share of Roori's D interest is concerned. He also held that since Inder Kaur was mutated in the revenue records she had the right to sell her share in favour of defendant Nos. 1 to 4 and consequently defendant Nos. 1 to 4 derived right, title and interest by virtue of the sale deed in their favour executed by Inder Kaur. With these findings he reversed the judgment and decree of the trial court and allowed the appeal. The plaintiff, therefore, carried the matter E in Second Appeal to the High Court. The High Court however, having dismissed the same in limine, the present appeal by way of special leave has been filed.

Mr. A.S. Sohal, learned counsel for the appellant contended that the F learned Additional District Judge committed gross error of law in coming to the conclusion that the mutation order in favour of Inder Kaur conveyed valid titled on her which she could convey in favour of defendant Nos. 1 to 4 under the registered sale deed in question. He further contended that the findings of the learned trial Judge on the question whether Roori was the daughter of Gurbax Singh or Inder Kaur was the daughter of Gurbax G Singh not having been reversed, it was not open to come to the conclusion that Inder Kaur had valid title to half share of the property of Gurbax Singh. The learned counsel also urged that in view of the Will executed by Gurdip Kaur, widow of Gurbax Singh in favour of plaintiff and Roori and in view of the succession certificate issued by the civil court in their favour, H the lower appellate court was wholly in error in ignoring the same and in

coming to a conclusion that plaintiff could not file the suit in respect of half share of Roori. It was further urged that the High Court without applying its mind dismissed the second appeal in limine has committed serious error of law. The learned counsel for the respondents on the other hand contended that a court of fact having examined and scrutinised the evidence on record and having reached his conclusion, the second appellate Court rightly refused to interfere with the same and accordingly this Court would not be entitled to interfere with the same under Article 136 of the Constitution.

Having heard the learned counsel for the parties and having scrutinised the judgment of the trial Judge as well as that of the lower appellate court, we find sufficient force in all the contentions raised by the learned counsel for the appellant. At the outset, it may be noticed that the plaintiff had filled the suit claiming half interest for herself and claiming half interest in favour of the husband and sons of Roori and, therefore, the learned Additional District Judge was wholly in error to hold that the plaintiff could not have filed the suit in question. In view of rival stand of the parties the main question that arose for consideration was whether Roori was daughter of Gurbax Singh or Inder Kaur, defendant No. 5 was the daughter of same Gurbax Singh? The learned trial Judge after elaborate discussion of the evidence on record both oral and documentary came to the positive conclusion that it was Roori who was the daughter of Gurbax Singh as alleged by the plaintiff and not Inder Kaur. The lower appellate Court without focusing his attention to the weighty reasons advanced by the trial court and without examining the materials on record in that respect even did not set aside the said finding of the trial Judge and yet reversed the decree of the trial Judge. We have no hesitation to come to the conclusion that the said judgment of the Additional District Judge is wholly unsustainable in law. The crucial point being as to who was the second daughter of Gurbax Singh, namely Roori or Inder Kaur, and the trial Judge having come to the positive conclusion that it was Roori who was the second daughter of Gurbax Singh, the lower appellate Court was not justified in not considering the material evidence as well as reasons advanced by the trial Judge and merely coming to the conclusion that the evidence on the file do not prove Roori to be the daughter of Gurbax Singh. Further, the lower appellate Court has not come to any positive finding that Inder Kaur was the daughter of Gurbax Singh. He has been swayed away by the so called mutation in the revenue record in favour of

A Inder Kaur. Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment. B That apart, as it would be seen, the learned trial Judge had considered the oral evidence adduced on behalf of the parties to establish the respective stand as to who was the second daughter of Gurbax Singh and on perusal of the same came to the conclusion that it was Roori who was the second daughter of Gurbax Singh. The Additional District Judge has not even C discussed anything about the said oral evidence and the reasonings advanced by learned trial Judge in coming to the conclusion that it was Roori who was the second daughter of Gurbax Singh. Non consideration of the oral evidence adduced by the parties, by the lower appellate Court vitiates the ultimate conclusion on the question whether Roori was daughter of D Gurbax Singh or not. It is further seen that Gurdip Kaur, widow of Gurbax Singh had executed a Will in respect of the entire estate in favour of plaintiff and Roori and after death of Gurdip Kaur a succession certificate had been issued by the civil court under the Indian Succession Act in favour of plaintiff and said Roori. The said succession certificate and rights flowing therefrom cannot be ignored. Admittedly no attempt has been E made by defendant Nos. 1 to 4 to annul the succession certificate on the grounds available under the Succession Act. The Additional District Judge committed serious error of law in not considering the said Will and the succession certificate in question which unequivocally clinches the matter and thereby the ultimate judgment of the Additional District Judge is F vitiated. The High Court also was in error in not examining these questions and dismissing the Second Appeal in limine.

In the aforesaid premises, we set aside the judgment and decree of the High Court in Second Appeal as well as that of the Additional District Judge in Case No. 66 of 1986/1993 and confirm the judgment and decree G of the Senior Sub Judge, Tran Taran in Suit No. 218 of 1982. This appeal is allowed but in the circumstances without any order as to costs.

S.K. Appeal allowed.