

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16495/2010

(From the judgement and order dated 23/02/2010 in RSA No.82/1997 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

AJIT SINGH Petitioner(s)

VERSUS

UDHAM KAUR & ORS. Respondent(s)

(With prayer for interim relief)

Date: 17/07/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Mr.Tarun Gupta, Adv.

For Respondent(s) Mr.Prahlad Kumar, Adv.

UPON hearing counsel the Court made the following
O R D E R

This petition is directed against judgment dated 23.02.2010 of the learned Single Judge of the Punjab and Haryana High Court whereby he allowed the second appeal filed by the respondents and set aside the concurrent judgments and decrees passed by the trial Court and the lower appellate Court in a suit for possession filed by Smt. Bhagwant Kaur widow of Gurnam Singh (predecessor of the petitioner).

The land owner, namely, Gurnam Singh sold his ancestral land measuring 16 kanals 17 marlas to Amar Singh s/o Mihan Singh and Bhajan Singh s/o Partap Singh vide sale deed dated 26.11.1965. Darbara Singh s/o Hazura Singh filed Suit No.715/1966 which was decreed by Sub-Judge, Ist Class, Phillaur vide judgment dated 15.11.1967. The operative portion of that judgment is extracted below:

"As a result of my findings above I pass a decree for declaration to the effect that sale deed dated 26.11.65 executed by defendant no.3 in favour of defendants no.1 and 2 will not effect the reversionary rights of the plaintiff after the death of defendant no.3 as the primary relief is granted the suit for secondary relief is dismissed. Parties are left to bear their own costs."

Civil Appeal No.15/1968 filed by Amar Singh and Bhajan Singh was partly allowed by Additional District Judge, Jalandhar vide judgment dated 27.4.1968 in the following terms:

"In view of my above finding I allow this appeal partially to this extent that the sale in dispute would not affect the reversionary rights of the plttf. after the death of Gurnam Singh Defdt. No.3 except to the extent of Rs.3225/- in case the vendees actually pay Rs.885/- to the plttf who is the previous mortgages. If the vendees do not pay the sum of Rs.885/- to the plttf the sale in dispute would not affect the reversionary rights of the plttf after the death of Gurnam Singh Defdt. No.3 except to the extent of Rs.2340/-."

After 9 years, Bhagwant Kaur filed Suit No.240/1987 for possession by asserting that in view of the findings recorded by the trial Court in Suit No.715/1966 and Additional District Judge, Jalandhar in Civil Appeal No.15/1968, she had acquired right over the suit property. She impleaded the legal heirs of Amar Singh and Bhajan Singh as defendants. The trial Court decreed the suit vide judgment dated 25.2.1991 and declared that the plaintiff is entitled to possession of the suit land.

The legal heirs of Amar Singh including his widow Smt. Udham Kaur challenged the decree of the trial Court in RCA No.168/1996, which was dismissed by the Additional District Judge, Jalandhar.

Udham Kaur and five others challenged the appellate decree in Regular Second Appeal No.82/1997. The learned Single Judge of the Punjab and Haryana High Court framed the following questions:

"1. Whether the action of the plaintiff in questioning the sale in favour of Amar Singh and Bhajan Singh was hit by the principle of estoppel or not?

2. Whether the plaintiff, who was an alien to the decree dated 7.11.1967, could invoke its terms to seek possession of the suit property in the absence of the Decree Holder seeking to invoke such a reversionary right granted in his favour?"

After answering question No.1 in favour of the petitioner herein, who was respondent in the second appeal, the learned Single Judge relied upon the judgment of this Court in *Gulam Abbas v. Haji Kayyam Ali* AIR 1973 SC 554 and allowed the second appeal. The relevant portions of the judgment of the learned Single Judge are extracted below:

"But, the crucial question that is to be determined is as to whether Bhagwant Kaur, who herself had alienated the suit property by acting as power of attorney holder of alienor-Gurnam Singh, was bound by her own act and conduct and whether the principle of estoppel would restrict her right to invoke her reversionary rights by way of filing the instant suit or not?

In my considered opinion, the principle of estoppel would restrain Bhagwant Kaur from challenging the alienation to which she herself was an active participant having executed the sale deed and having received the consideration therefore. If she is given such a right, it would amount to legitimizing a fraud on legislation.

The Supreme Court in *Gulam Abbas Versus Haji Kayyam Ali and others*, AIR 1973 S.C. 554, observed in paragraphs 7 and 11 of the judgment as under.-

"7. Sir Roland Wilson, in his *"Anglo Mohamadan Law"* (P.260, paragraph 208) states the position thus:

"For the sake of those readers who are familiar with the joint ownership of father and son according to the most widely prevalent school of Hindu Law, it is perhaps desirable to state explicitly that in Muhammadan, as in Roman and English Law, *nemo est heres viventis* - a living person has no heir. An heir apparent or presumptive has no such reversionary interest as would enable him to object to any sale or gift made by the owner in possession; see *Abdul Wahid*, (1885) 12 Ind App 91 (PC) and (1885) ILR 11 Cal. 597 which was followed in *Hasan Ali*, (1889) 11 All 456. The converse is also true; a renunciation by an expectant heir in the lifetime of his ancestor is not valid, or enforceable against him after the vesting of the inheritance." This is a correct statement, so far as it goes, of the law, because a bare renunciation of an expectation to inherit cannot bind the expectant heir's conduct in future. But, if the expectant heir goes further and receives consideration and so conducts himself as to mislead an owner into not making dispositions of his property *inter vivos* the expectant heir could be debarred from setting up his right when it does unquestionably vest in him. In other words, the principle of estoppel remains untouched by this statement.

11. It may be mentioned here that Muslim Jurisprudence, where theology and moral concepts are found sometimes mingled with

secular utilitarian legal principles, contains a very elaborate theory of acts which are good (because they proceed from "hanna"), those which are bad (because they exhibit "qubuh" and those which are neutral per se. It classifies them according to varying degrees of approval or disapproval attached to them (See: Abdur Rahim's "Muhammadan Jurisprudence", P. 106). The renunciation of a supposed right, based upon an expectancy, could not, by any test found there, be considered "prohibited". The binding force in future of such a renunciation would, even according to strict Muslim Jurisprudence, depend upon the attendant circumstances and the whole course of conouct of which it forms a part. In other words, the principle of an equitable estoppel, far from being opposed to any principle of Muslim Law will be found, on investigation, to be completely in consonance with it."

In view of the above extracted observations, I am of the considered opinion that even though Bhagwant Kaur had a right to file the suit in view of the provisions of Sections 2 and 4(1) of the Act, but keeping in view the fact that she herself alienated the suit property by actively participating in the sale and acting as General Power of Attorney of the alienor, she herself became alienor as she received the sale consideration and consequently, she was clearly estopped by her own conduct to challenge the valid and legal act which had the effect of alienating the suit property in favour of the appellants."

We have heard Shri Tarun Gupta, learned counsel appearing on behalf of the petitioner and Shri Prahlad Kumar, learned counsel appearing on behalf of respondent No.5 and carefully perused the record.

In our considered view, the reasons assigned by the learned Single Judge for setting aside the decrees passed by the trial Court and the lower appellate Court are legally correct and the judgment under challenge does not call for interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

(Satish K.Yadav)
Court Master

(Usha Sharma)
Court Master