

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal NO.5257 OF 2012

RAMESH ...APPELLANT(S)

VERSUS

ISHAR (D) THRU LRS. & ANR. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5258 OF 2012

RAMESH ...APPELLANT(S)

VERSUS

ISHAR (D) THRU LRS. & ANR. ...RESPONDENT(S)

O R D E R

1. Civil Appeal No.5258 of 2012 arises out of the impugned order dated 16.03.2010 passed in R.S.A. No.2961 of 1984 and Civil Appeal No.5257 of 2012 arises out of the impugned order dated 21.09.2010 passed in the Review Application being no.74-C/2010 in the RSA No.2961 of 1984, by the High Court of Punjab and Haryana.
2. The appellant - original plaintiff in both these appeals had filed the suit against the respondents - defendants initially for permanent injunction and subsequently claiming joint possession in respect of

the land in question. In the suit, he had claimed to be the adopted son of one Chhaju Ram, and pleaded that the land in question was an ancestral land and his adoptive father Chhaju Ram had no right to alienate the said land except for legal necessity. It was also pleaded that the said Chhaju Ram was drunkard and gambler and he had sold the said suit land in favour of the defendant Nos. 2 and 3 without any legal necessity and without any consideration having been received, vide the sale deed dated 31.08.1979. The said suit was resisted by the respondents - defendants by filing their written statements separately.

3. The Trial Court, after considering the pleadings of the parties, had framed the issues particularly with regard to the issue whether the Sale Deed dated 31.08.1979 was for the estate and with consideration. The Trial Court, after appreciating the evidence on record held that the plaintiff had proved to be the adopted son of the defendant No.1 and also held that the suit property was an ancestral property. It was further held that the father - Chhaju Ram had sold the suit property without any legal necessity and accordingly the suit was decreed in favour of the present appellant - plaintiff.
4. The respondents - defendant Nos. 2 and 3 having filed an appeal before the Appellate Court, the same was dismissed. The said respondents having filed the Second

Appeal before the High Court, the Second Appeal was admitted on the following two substantial questions of law: -

(I) Whether the findings of the learned courts below, holding that the property in the hands of defendant No.1 was ancestral joint Hindu family property qua the plaintiff/respondent, is the outcome of misreading of evidence and contrary to law, therefore, not sustainable?

(II) Whether in the absence of pleadings and evidence it could be held that the parties were governed by the custom and whether the finding in the previous suit in which the rights of the appellants were not decided could operate as res judicata?

5. The High Court having regard to the evidence on record and considering the submissions made by the learned counsel for the parties allowed the Second Appeal by setting aside the judgment and decree passed by the Trial Court, as confirmed by the Appellate Court. The appellant - plaintiff being aggrieved by the same has preferred the present appeal.
6. The learned senior counsel, Mr. Manoj Swarup for the appellant submitted that the High Court had committed a gross error in setting aside the concurrent findings of facts recorded by two Courts below, by which it was

held that the father of the appellant - Chhaju Ram had sold the suit property without any legal necessity, and that the sale deed was a sham transaction between Chhaju Ram and the present respondents - defendants. He also placed heavy reliance on the decree passed on 31.01.1979 in the suit filed by the appellant (plaintiff) against his father challenging a gift deed executed in favour of one Gurcharan Singh. According to him, in the said suit, the gift deed was held to be illegal, and the appeal preferred by the said Gurcharan Singh was dismissed by the Appellate Court on 25.05.1981, and in the meantime the said adoptive father Chhaju Ram had made the impugned sale on 31.08.1979, of course he fairly submitted that the question of validity of the said alienation made by Chhaju Ram in favour of the present respondents was not gone into by the appellate court in the appeal preferred by Gurcharan Singh.

7. The learned senior counsel, Mr. Neeraj Kumar Jain for the respondents, however, has placed heavy reliance on the decree passed by the Court in an earlier suit filed by the appellant against Chhaju Ram claiming partition, which was decreed on 31.07.1973 (Ex. P/14) with the consent of the parties, by virtue of which the properties of the Chhaju Ram was partitioned, and the present land in question had fallen into the share of

the said Chhaju Ram. He therefore submitted that by virtue of the said decree, the suit property in question had ceased to be an ancestral land and had become the separate property of the said Chhaju Ram. According to him, the said decree was not considered by both the Courts below and has rightly been considered by the High Court for holding that the appellant - plaintiff had no right to challenge the sale deed nor had any right to claim joint possession of the land in question.

8. After having carefully gone through the record of case and also the impugned judgment passed by the High Court, in the light of the submissions made by the learned senior counsel for the parties, we are of the opinion that the Trial Court as well as the First Appellate Court had failed to take into consideration the consent decree dated 31.07.1973 passed by the Court in the suit for partition earlier filed by the appellant - plaintiff. In view of the said decree, the suit land had fallen into the share of the father - Chhaju Ram, and the same had ceased to be an ancestral property, and the appellant - plaintiff also had ceased to have any right in the suit land. The High Court has rightly relied upon the decision of this Court in the case of Hardeo Rai Vs. Sakuntala Devi & Ors., (2008) 7 SCC 46: AIR 2008 SC 2489, wherein it has been held

inter alia that when a coparcener takes definite share in the property, he becomes owner of that property, and as such he can alienate the same by sale or mortgage in the same manner as he can dispose of his separate property.

9. In the instant case also, after the said decree was passed on 31.07.1973, the land in question had vested in the said Chhaju Ram, as an absolute owner, and hence the sale made by him in favour of the present respondents could not have been challenged by the appellant-plaintiff on the ground that the same was sold not for legal necessity or was sold without receiving any consideration.
10. The impugned order passed by the High Court being just and legal, we do not find any reason to interfere with the same. Hence, both the appeals are dismissed.
11. Pending applications, if any, shall stand disposed of.

.....J.
(BELA M. TRIVEDI)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
22ND FEBRUARY, 2024.

ITEM NO.103

COURT NO.15

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).5257/2012

RAMESH

Appellant(s)

VERSUS

ISHAR (D) THRU LRS. & ANR.

Respondent(s)

WITH

C.A. No. 5258/2012 (IV)

Date : 22-02-2024 These appeals were called on for hearing today.

CORAM : HON'BLE MS. JUSTICE BELA M. TRIVEDI
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Appellant(s) Mr. Manoj Swarup, Sr. Adv.
Mr. Parveen Kumar Aggarwal, Adv.
Mr. Abhishek Grover, Adv.
Mr. Sanjay Jain, AOR
Ms. Apoorva Singh, Adv.

For Respondent(s) Mr. Neeraj Kumar Jain, Sr. Adv.
Mr. Siddharth Jain, Adv.
Mr. Sanjay Singh, Adv.
Mr. Aniket Jain, Adv.
Mr. Umang Shankar, AOR

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

1. In terms of the signed order, the Civil Appeals are dismissed.
2. Pending application(s), if any, shall stand disposed of.

(RAVI ARORA)
COURT MASTER (SH)

(MAMTA RAWAT)
COURT MASTER (NSH)

(signed order is placed on the file)