

Before Mahesh Grover, J.

SMT. UDHAM KAUR AND OTHERS,—Appellants

versus

AJIT SINGH AND OTHERS,—Respondents

R.S.A. No. 82 of 1997

23rd February, 2010

Code of Civil Procedure, 1908—Hindu Succession Act, 1956—Ss. 2 & 4(1)—Principle of estoppel—Execution of sale deed in favour of predecessors-in-interest of appellants—Challenge by brother of vendor—Suit decreed by Trial Court—1st Appellate Court affirming judgment of trial Court while holding that revisionary rights of widow of vendor could not be defeated—Decree holder failing to get the decree executed—Suit for possession filed by widow—Maintainable in view of provisions of Ss. 2 & 4(1) of 1956 Act—Whether action of widow in questioning sale hit by principle of estoppel—Held, yes—Sale deed itself executed by widow while acting as attorney of her deceased husband and entire sale consideration received by her—Estopped by her own conduct to challenge valid and legal sale deed—Appeal allowed, judgments and decrees of Courts below set aside.

Held, that 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 therefor. If she is given such a right, it would amount to legitimizing a fraud on legislation.

(Para 17)

Further held, 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.

(Para 19)

Amardeep Singh Gill and Malkiat Singh, Advocate, *for the appellants.*

Kanwaljit Singh, Senior Advocate with Ms. Prachi Sharma, Advocate, *for respondent No. 1.*

None for respondent Nos. 2 to 5.

MAHESH GROVER, J.

C.M. No. 1945-C of 2010

(1) The application is allowed and the appellants are permitted to formulate the questions of law as mentioned therein.

R.S.A. No. 82 of 1997

(2) This Regular Second Appeal is directed against judgments and decrees dated 25th February, 1991 and 12th December, 1996 passed respectively by the Sub Judge Ist Class, Phillaur (hereinafter described as 'the trial Court') and the Additional District Judge, Jalandhar (referred to hereinafter as 'the first appellate Court').

(3) Bhagwant Kaur widow of Gurnam Singh filed a suit for possession pleading herself to be the owner of the suit property. She asserted in the plaint that initially, Gurnam Singh, her husband, was the owner of the suit property which was ancestral in nature; that he executed a sale deed dated 26th November, 1965 in favour of Amar Singh and Bhajan Singh sons of Partap Singh, the predecessors-in-interest of the present appellants and respondent Nos. 2 to 5, alienating the suit property measuring 16 kanals 17 marlas, which was converted to 17 kanals and 2 marlas after consolidation; and that the said sale was challenged by Darbara Singh, brother of Gurnam Singh by way of Civil Suit No. 715 of 1966 which was decreed. The essential challenge to the sale was that since Gurnam Singh did not have any male legal heir, the reversionary rights of Darbara Singh stood defeated by it. By virtue of the said decree, a declaration was

given that the sale would not affect the reversionary rights of Darbara Singh and after the death of Gurnam Singh when the succession opened, he would be entitled to retrieve the suit property. An appeal was filed by Amar Singh and Bhajan Singh which was accepted partially and it was observed that the sale in dispute would not affect the reversionary rights of Darbara Singh after the death of Gurnam Singh except to the extent of depositing of Rs. 3225 in cash. The vendees had actually paid Rs. 885 to Darbara Singh, who was previous mortgagee and if the vendees did not pay the amount of Rs. 885 to him, the sale in question would not affect his reversionary rights except to the extent of Rs. 2840.

(4) In the instant suit, with the aforesaid background, it was pleaded by Bhagwant Kaur through Shri Ajit Singh son of Darbara Singh, respondent No. 1 in this appeal, that the decree dated 7th November, 1967 as affirmed by the first appellate Court, was binding upon the appellants and respondent Nos. 2 to 5, who were the successors- in-interest of Amar Singh and Bhajan Singh. It was also pleaded that Gurnam Singh died on 22nd June, 1986 leaving behind Bhagwant Kaur as the only legal heir.

(5) A joint written statement was filed by the appellants and respondent No. 5 contesting the suit. They questioned the *locus standi* of Bhagwant Kaur to file the suit and also pleaded estoppel. The General Power of Attorney by the plaintiff in favour of respondent No. 1 was said to be a forged document and it was also contended by them that the suit was not maintainable through General Power of Attorney. The factum of sale in favour of Amar Singh and Bhajan Singh was not denied, but it was clarified that the sale deed was executed by Bhagwant Kaur, acting as attorney of Gurnam Singh and that she had received the consideration at the time of sale. It was pleaded that they were in actual cultivating possession of the suit property ever since the sale and that by virtue of their long possession, they have become owner thereof by way of adverse possession. It was further pleaded that the decree dated 7th November, 1967 was never got executed by the decree holder, i.e., Darbara Singh even after the death of Gurnam Singh. It was denied that the suit property was ancestral in nature. It was further pleaded that the land in dispute which was mortgaged with Darbara Singh and Gian Kaur was also got redeemed by Amar Singh vide orders dated 10th December, 1969 and 21st November, 1969. A mutation was also stated to have been sanctioned in favour of Amar Singh

and Bhajan Singh after the execution of the sale deed in question and according to which Bhagwant Kaur was not having any share in the property. Gurnam Singh was stated to have sold his entire share in the property and had moved out of the village. It was averred that Bhatwant Kaur had also executed sale deeds in favour of some persons *qua* some other property while acting as attorney of Gurnam Singh. Darbara Singh was stated to have filed a suit against those persons as well which was dismissed. The rest of the averments were denied.

(6) Replication was filed reiterating the averments made in the plaint and the following issues were struck :—

1. Whether plaintiff is the owner of the suit land in lieu of judgment and decree of the appellate court dated 7th November, 1967 ?
OPP
2. If issue No. 1 is proved, whether the plaintiff is entitled to possession of the suit land ? OPP
3. Whether defendants are bound by the decree dated 7th November, 1967 ? OPP
4. Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD
5. Whether suit is bad for misjoinder of parties ? OPD
6. Whether the plaintiff has no cause of action ? OPD
7. Whether the suit is barred by limitation ? OPD
8. Whether the plaintiff has no *locus standi* to file the present suit ? OPD
9. Whether the plaintiff estopped by her act and conduct from filing the present suit ? OPD
10. Whether the suit has been filed by a competent person ? OPD
11. Whether the defendants have become owner of the suit property by way of adverse possession ? OPD
12. Relief.

(7) The trial Court, after considering the evidence on record, decreed the suit, whereas the first appellate Court dismissed the appeal of the appellants. On the basis of the judgment rendered by the Supreme Court in **Giani Ram and others versus Ramji Lal and others**, (1) the first appellate Court also concluded that the revisionary rights of Bhagwant Kaur, who was the successor of Gurnam Singh, could not be defeated.

(8) This has resulted in the filing of the instant Regular Second Appeal wherein learned counsel for the appellants has contended that the judgment of the Apex court in **Giani Ram and others versus Ramji Lal and others** (*supra*) which has been relied upon by the first appellate Court has been totally misinterpreted. It was pleaded that there was, indeed, no doubt, that after coming into force of the Hindu Succession Act, 1956 (for short, 'the Act'), the rights of the legal heirs of a deceased to challenge the alienation of the ancestral property could not have been taken away, but, at the same time, learned counsel for the appellants strenuously pointed out that the sale deed itself was executed by Bhagwant Kaur-plaintiff while acting as attorney of Gurnam Singh and she had received the entire sale consideration which has come in evidence and in view of this fact, she was clearly precluded from filing the instant suit as her act was hit by the principle of estoppel. It was next contended that Darbara Singh, Decree Holder, did not choose to get the decree executed, even though he was alive when the instant suit was filed. He also did not file the suit in his own capacity, but the suit was filed by Bhagwant Kaur through Ajit Singh, who is the son of Darbara Singh. As such, it was argued that the instant litigation was completely a dishonest litigation in order to defeat the rights of the appellants, who had acquired right in the property by virtue of a validly executed sale deed.

(9) Learned counsel for respondent No. 1, on the other hand, contended that the findings recorded by both the Courts below are concurrent in nature and do not require any interference, more so when no question of law, much less a substantial question of law, arises for consideration of this Court. He further contended that the judgment of the Supreme Court in **Giani Ram and others versus Ramji Lal and others** (*supra*) has rightly been interpreted by the first appellate Court. He, thus, prayed for dismissal of the appeal.

(1) AIR 1969 S.C. 1144

(10) I have thoughtfully considered the rival contentions of the learned counsel for the parties and have gone through the record including the impugned judgments.

(11) In my opinion, the following questions of law arise for consideration in this appeal :—

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 7th November, 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 ?

(12) There is no dispute about the facts., i.e., the execution of the sale deed in favour of Amar Singh and Bhajan Singh, passing of the decree dated 7th November, 1967 at the behest of Darbara Singh, brother of Gurnam Singh and his not executing the decree nor pressing for possession by way of separate suit. The controversy, therefore, can straight-away be addressed on the basis of the judgment of the Apex Court in **Giani Ram and others versus Ramji Lal and others** (*supra*) which has resulted in the dismissal of the appeal by the first appellate Court.

(13) If the facts of the aforesaid case are to be seen, then it transpires that in that case, a Hindu Jat of Hissar District had alienated his share in the ancestral land without any legal necessity in the year 1916. In the year 1920, his eldest son sued and obtained a declaratory decree that the sale was ineffective against his reversionary rights. The alienor died in 1959 leaving behind him his widow, three sons and two daughters and after enactment of the Act, they chose to challenge the alienation of the ancestral property and it was held by the Apex Court that after enactment of the Act, the estate of the deceased-alienor devolved upon three sons, widow and two daughters, who were his surviving heirs and that it cannot be said that since in the year 1920, the wife and the daughters were incompetent to challenge the alienation of the ancestral property, they could not inherit it after the Act came into force. It was further held in the judgment that the decree obtained by the competent reversioner did not make the alienation a nullity, but removed the obstacle to the right of the reversioner to succeed as and when the succession opened.

(14) Paragraphs 5 and 6 of the above mentioned judgment of the Apex Court are relevant and are reproduced below :—

- “5. The Punjab Custom (Power to Contest) Act 1 of 1920 was enacted to restrict the rights exercisable by members of the family to contest alienations made by a holder of ancestral property. By virtue of Section 6 of the Act no person is entitled to contest an alienation of ancestral immovable property unless he is descended in the male line from the great-great grand father of the alienor. Under the customary law in force in the Punjab a declaratory decree obtained by the reversionary heir in an action to set aside the alienation of ancestral property enured in favour of all persons who ultimately took the estate on the death of the alienor for the object of a declaratory suit filed by a reversionary heir impeaching an alienation of ancestral estate was to remove a common apprehended injury, in the interest of the reversioners. The decree did not make the alienation a nullity it removed the obstacle to the right of the reversioner entitled to succeed when the succession opened. By the decree passed in suit No. 75 of 1920 filed by Giani Ram it was declared that the alienations by Jwala were not binding after his lifetime, and the property will revert to his estate. It is true that under the customary law the wife and the daughters of a holder of ancestral property could not sue to obtain a declaration that the alienation of ancestral property will not bind the reversioners after the death of the alienor. But a declaratory decree obtained in a suit instituted by a reversioner competent to sue has the effect of restoring the property alienated to the estate of the alienor.
6. The effect of the declaratory decree in suit No. 75 of 1920 was merely to declare that by the sale interest conveyed in favour of the alienee was to enure during the lifetime of the alienor. The conclusion is therefore inevitable that the property alienated reverted to the estate of Jwala at the point of his death and all persons who would, but for the alienation, have taken the estate will be entitled to inherit the same. If Jwala had died before the Hindu Succession Act, 1956 was enacted the three

sons would have taken the estate to the exclusion of the widow and the two daughters. After the enactment of the Hindu Succession Act the estate devolved, by virtue of Sections 2 and 4(1) of the Hindu Succession Act, 1956, upon the three sons, the widow and the two daughters. We are unable to agree with the High Court that because in the year 1920, the wife and the daughters of Jwala were incompetent to challenge the alienation of ancestral property by Jwala, they could not, after the enactment of the Hindu Succession Act, inherit his estate when succession opened after that Act came into force.”

(15) There is, thus, no doubt about the fact that the suit by Bhagwant Kaur was maintainable by virtue of the coming into force of the provisions of Sections 2 and 4(1) of the Act as she was entitled to succeed to the estate of Gurnam Singh after his death.

(16) But, the crucial question that is to be determined is as to whether Bhagwant Kaur, who herself 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 to invoke her reversionary rights by way of filing the instant suit or not ?

(17) 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 therefor. If she is given such a right, it would amount to legitimizing a fraud on legislation.

(18) The Supreme Court in **Gulam Abbas versus Haji Kayyam Ali and others**, (2) 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 classified 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 conduct 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.”

(19) 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.

(20) The questions of law, therefore, stand answered as above.

(21) Consequently, the instant appeal is accepted and the impugned judgments and decrees are set aside.

R.N.R.

Before Ranjit Singh, J.

**THE MANAGING DIRECTOR, PUNJAB STATE
COOPERATIVE BANK LTD. CHANDIGARH,—Appellant**

versus

MANJIT SINGH SODHI AND OTHERS,—Respondents

R.S.A. No. 69 of 2005

28th January, 2010

Punjab Civil Services Rules, Volume II—R1.6.1—Payment of Gratuity Act, 1972—Ss.4(5) & 14—Punjab State Cooperative Financing Instituting Service (Common Cadre) Rules, 1970–71—R1.2(C) & 3a—Respondent rendering service of 31 years 11 months & 25 days—Bank paying gratuity equivalent to 21 months salary—Claim for payment of gratuity equivalent to 22 months of salary rejected as service was not complete and fell short by 6 days—No provision for calculating fraction of a year as a completed year under Common Cadre Rules—Respondent entitled to gratuity equivalent to 21 months salary—‘Salary’, defined—To include all other remuneration such as house rent and medical allowance—Calculation of gratuity by including all other remunerations drawn