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Case Comment: Amarjit Kaur vs Karamvir Singh

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INTRODUCTION

In the current case of Amarjit Kaur vs Karamvir Singh (AIR 2006 SC 2481), the ancestor of both parties had sold the land to someone without any consideration and legal necessity. So, one of his legal heirs had filed a suit pleading for a 17/24th share in the total property. The main point of discussion is that if one of the legal heirs has the entire property in his name, via a mala fide intention, then the position of other legal heirs needs to be investigated.

FACTS

Ajit Singh was the ancestor of both of the parties. Joginder Singh was one of the legal heirs of Ajit Singh. He filed a suit for declaration claiming that Ajit Singh had sold the land to Bishan Singh with no consideration and legal necessity. The decree of the High Court of Punjab and Haryana was in the favour of Joginder Singh, asking Bishan Singh to relinquish his rights over the land and the sale deed between him and Ajit Singh void. Joginder Singh paid a sum of Rs.30000 for the same to Bishan Singh in terms of compromise regarding the same. Later, Joginder Singh transferred the land onto his name during the mutation and after a while, a portion of it was written on his wife's name and another portion of it on his child's name.

Later, the original plaintiffs, the respondents in the current case claimed that the decree of the High Court was not binding on them because they were not parties to the suit and not only Joginder Singh but also the other legal heirs of Ajit Singh would get the share in the property and hence pleaded for declaration and consequential relief, in this case, had transferred the land onto his name during the mutation and after a while, a portion of it was written on his wife's name and another portion of it on his child's name. Later, the original plaintiffs, the respondents in the current case claimed that the decree of the High Court was not binding on them because they were not parties to the suit and not only Joginder Singh but also the other legal heirs of Ajit Singh would get the share in the property and hence pleaded for declaration and consequential relief in this case, had transferred the land onto his name during the mutation and after a while, a portion of it was written on his wife's name and another portion of it on his child's name.

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LEGAL HISTORY

Joginder Singh claimed that based on the previous decree he had become the owner of the land. He pleaded that he had also spent a lot of money to make the property fruitful, including installing an electrical tube well, a 7.5-Horsepower electric engine, and building 4 to 5 rooms for seed, fertilizer, and other supplies. He also claimed to have planted around 600 to 700

eucalyptus trees across four acres of orchard. Other defendants claimed to have acquired ownership through a court order and mutual transactions.

The following litigation could not be maintained because of the preceding action's verdict in favour of Joginder Singh, and the decision of this Court dated 22.3.1966 served as res judicata. Plaintiffs were also estopped from filing action by their acts and conduct, and the complaint was barred by time and bad for non-joinder of relevant parties, according to the argument. In relation to the appointment of a guardian for juvenile defendants, Order 32 Rule 3¹ of the CPC was referred to. The action was dropped by the minor defendants because these required measures had not been followed. The Trial Court had dismissed the suit. But the First Appellate Court had decreed and the High Court confirmed that Joginder Singh had no right to deny the claim of other heirs on the very ground that he received the land from Bishan Singh based on the compromise between them. Hence, the current appeal.

LEGAL ISSUES

There were 13 issues framed by the Trial Court but then the relevant issues are taken into consideration here which are from 3-6

- Whether the sale of the suit property by Ajit Singh in favour of Bishan Singh null and void and if so, its effect?
- Whether plaintiffs are the owners of the suit property?
- If the previous issue is proved, then whether the plaintiff is entitled to the possession of the suit property as prayed for?
- Whether the plaintiff has no locus standi to file the present suit?

JUDGMENT

The case was decided on 25.04.2006 by Justice Arijit Pasayat and Justice Tarun Chatterjee. The decree of the High Court that all the legal heirs would share reversionary rights over the property in dispute was upheld by the Supreme Court of India and the suit was dismissed as

¹ Code of Civil Procedure 1908, ord 32 r 3

there were no merits in the case and there were no damages decided as well. The precedent of *Giani Ram v Ramjilal*² was used in deciding this case in which the Court held that the Punjab Custom (Power to Contest) Act 1920 was created to limit the ability of the family members to appeal alienations made by a holder of ancestral property.

According to Section 6³ of the Act, no one has the right to oppose an alienation of ancestral immovable property unless he is derived in the male line from the alienor's great-great grandfather. A declaratory decree obtained by a reversionary heir in an action to set aside an alienation of ancestral property belonged to all the persons who eventually took the estate on the alienor's death. The motive for the suit for declaration filed by the reversionary heir to remove an alienation of ancestral estate was to eradicate the widespread problem to all the reversioners. The ruling eliminated an obstruction to the reversioner's right to inherit the estate when the succession was opened but the alienation was not annulled.

So, even the plaintiffs would get a share in the property. This Court upheld their rights by rejecting Bishan Singh's appeal against them. The sole result of the agreement was that by paying a sum, Joginder Singh gained instant control of the suit land, which he would have been able to acquire only after Ajit Singh's death. Ajit Singh's land became a part of his inheritance, which was passed to all his legal heirs. The plaintiffs' legal rights could not have been infringed upon by the compromise in question. Hence, as there were no merits, the appeal was dismissed.

CASE ANALYSIS: CONCLUDING REMARKS

In a Hindu Joint Family, the power of alienation is with the Karta, the coparceners, and the managing members of the family.

There are different points that need to be considered when it comes to alienation namely:

- Whether the family governed by Dayabhaga Law or Mitakshara Law?

² *Giani Ram v Ramjilal* (1969) AIR 1144

³ Punjab Custom (Power to Contest) Act 1920, s 6

- What is the subject matter of alienation, movable or immovable property?
- Who is alienating the property?
- What is the proportion of the disposed of property?
- Whether alienation is for consideration or voluntary?

The term ‘consideration’ in this context means for which purpose the property was alienated. Similarly, ‘voluntary’ means whether the property is alienated as a private gift or in favour of a family member, or for a charitable purpose. In case of a legal necessity or with the consent of all the coparceners, Karta can freely alienate a particular property. The purpose of alienation is valid or not depends on the facts whether the rights of any of the coparceners are infringed or if the coparceners have assented or dissented to the same. If in any case, Karta has alienated the property, then the burden of proof lies on him and it varies in terms of necessities. The very question lies in whether he is alienating the property for the purpose of the family or for his own benefit.

A Karta is alienating for the sake of the family only in the following conditions:

1. To mitigate the family debts
2. Discharge the claim of the government
3. Maintenance of a family member
4. Any family function - marriage, funeral, upanayana, etc.
5. For any pious purposes.

PURPOSE	DOCTRINE
1, 2	Apatkale (Legal Necessity)
3, 4	Kutumbarthe
5	Dharmarthe

The Doctrine of Legal Necessity was laid in the case of *Hunooman Parsad Pandey v Musammat Babooee Munraj Kunweree*⁴. Though alienation is done without the consent of the family members, it is said to be lawful in the following conditions.

- Land requisition by the Government.
- If a mortgagee files a suit in case of a mortgaged property owned by the joint family.
- In the decree of repayment of debt taken by the Karta with the consent of the coparceners.

The facts of the current case depict that the joint family was governed by the Hindu Mitakshara Law. Ajit Singh, the Karta of the family had sold the immovable property of 151 Kanals and 5 Marlas of land to Bishan Singh voluntarily. This means that there is no consent from any of the coparceners or any other member of the family when the act was performed. This violates the principles of alienation under the Hindu Mitakshara Law. As per Hindu Mitakshara Law, all the coparceners have the same interest in the property by means of survivorship but in the current case, the question is that once the property is alienated, then when it is got back to the family from its adverse holder, it becomes the self-acquired property. But in this case, the facts are silent about whether the original plaintiffs had taken part in bringing the property from the adverse possession of Bishan Singh or they had been negligent regarding the same. In case they were negligent, then if they were negligent, then, in that case, the property would become the self-acquired property of Joginder Singh.

⁴ *Hunooman Parsad Pandey v Musammat Babooee Munraj Kunweree* (1897) ILR 19 All 357