

A SURJIT SINGH AND ORS ETC. ETC.  
v.  
HARBANS SINGH AND ORS ETC. ETC.

SEPTEMBER 6, 1995

B [M.M. PUNĀHHI AND SUJATA V. MANOHAR, JJ.]

*Code of Civil Procedure, 1908:*

C *Order XXII—Rule 10—Assignment of rights under preliminary decree against restraint order—Effect of—Suit for partition—Preliminary decree—Trial Court passing order partition—Preliminary decree—Trial Court passing order restraining parties from alienating suit property—One of the plaintiffs assigning his rights under preliminary decree to strangers—Application for impleadment by assignees—Held : Assignment of rights under preliminary decree is per se property for it relates to immovable property involved in suit—Assignment in defiance of restraint order in non est—Assignees have no cause to be impleaded as parties to suit.*

E 'X' was the owner of certain house and landed property. He adopted one of the three sons of his daughter, as he had no male heir. Later, when some litigation started between the family members, a family settlement deed was registered to the effect that 'X' and the three sons of his daughter were recognised as co-sharers of the properties of 'X', and on the death of 'X' his fourth share would devolve on the remaining three co-sharers. Paragraphs 13 and 14 of the settlement deed prohibited alienation of the property during the life time of 'X' without the consent of other co-sharers and the property was meant to be preserved from generation to generation within the family. On the death of X, two of the co-sharers filed a suit for partition. The trial Court passed a preliminary decree. while proceedings for passing the final decree were pending, trial court passed an order restraining all the parties from alienating or otherwise transferring in any manner any part of the suit property. In spite of the order, one of the plaintiffs, by a registered deed, assigned his rights under the preliminary decree in favour of some strangers. The assignees made an application under Order XXII Rule 10, CPC for their impleadment as parties to the suit. They contended that assignment of the decree could not be treated to be a transfer or alienation of the property; and that paragraphs 13 and 14

of the settlement deed could not be stated to have bound the grand-son of 'X' for ever not to alienate his share of the properties to strangers. The trial Court granted the prayer of the assignees. The appeal of the legal representatives of the co-sharers other than the assignor, was dismissed by the Additional District Judge and their revision petition was also dismissed by the High Court. Aggrieved, they filed the appeal.

Allowing the appeal and rejecting the application for impleadment of the assignees as parties to the suit, this Court.

**HELD :** 1.1. The assignment of the rights under the preliminary decree is per se property, for it relates to the immovable property involved in the suit. The assignment took place after the passing of the preliminary decree in which the assignor had been allotted 1/3rd share. It clearly and squarely fell within the ambit of the restraint order. It did not make any difference whether property per se had been alienated or a decree pertaining to that property. [358-A-B]

1.2. In defiance of the restraint order, the alienation/assignment was made. If it is allowed to go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seizin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. [358-C-D]

2. The assignment is non est because of the clear prohibition of the trial Court to the parties from alienating or transferring in any manner any part of the property involved in the suit. Therefore, the assignees cannot claim to be impleaded as parties on the basis of assignment. In the circumstances, there was no cause for the courts below to go into the question of interpretation of paragraphs 13 and 14 of the settlement deed.

[357-F-G; 358-E-F]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 3413 of 1990.

From the Judgment and Order dated 6.10.89 of the Punjab & Haryana High Court in C.R.P. No. 3086 of 1989.

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With

S.L.P.(C) No. 162 of 1986.

From the Judgment and Order dated 23.4.86 of the Punjab & Haryana High Court in C.A. No. 4 of 1986.

B

With

Con. Petition No. 158 of 1994.

C

B.N. Naik, R.C. Mishra, (Dr. Meera Aggarwal,) for Aggarwal Mishra & Co., K.B. Rohtagi, Ms. Aparna Rohtagi, J.C. Nagpal, Satish Viz, and Manoj Swarup, for the appearing parties.

The following Order of the Court was delivered :

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Here is an unfortunate dispute between members of a family, the head of which was one Janak Singh. It appears that Janak Singh had no son, but had a daughter, who on marriage had given birth to three sons, namely Gurdial Singh, Jeevan Singh and Pritam Singh. Janak Singh appears to have adopted Gurdial Singh as a son. He had considerable house and landed property. And since property divides, the members of the family got to be litigating with each other. With all sincerity, and in putting an end to it, Janak Singh, Gurdial Singh, Jeevan Singh and Pritam Singh, executed a family settlement deed on 27.6.1930, which was registered in the Office of the Sub-Registrar, Patiala. A broad feature of that settlement was that **all the four recognised** each other as co-sharers of the properties of Janak Singh under the settlement and it was contemplated that on the death of Janak Singh, his fourth share would also devolve on the remaining three co-sharers. *Prima-facie*, their aspirations embodied in paragraphs 13 and 14 thereof, disclose that alienation of property, during the life time of Janak Singh, was prohibited without consent of others and the property was meant to be preserved from generation to generation within the family.

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On the demise of Janak Singh, suit for partition for separate possessions of properties was filed in 1948 by Jeevan Singh and Pritam Singh against Gurdial Singh. A preliminary decree was passed by the Sub-Judges' Court at Patiala on 7th April, 1950. While proceedings for passing a final

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decree were pending, parties move for accounting and preservation of

mesne profits. On July 29, 1977, the trial court passed an order restraining all parties from alienating or otherwise transferring in any manner any part of the property involved in the suit. It appears that Pritam Singh assigned his rights under the preliminary decree on June 6, 1979 by a registered deed, partly in favour of the wife of his lawyer Shri Ram Singh Saluja, Advocate, and partly in favour of others, in the teeth of the restraint order of the trial court. On the basis of the assignment deed, the assignees made an application under Order 22 Rule 10 C.P.C., requiring the trial court to permit their impleadment as parties to the proceedings in the suit. Since they were aware that their claim for impleadment was precarious on account of the existence of the restraint order, they indulged therefore in legalistics in projecting that the assignment of a decree cannot be confused to be a transfer or alienation of any property and that the decree was barely a paper which had been assigned. They also tried to interpret paragraphs 13 and 14 to the settlement deed to be saying that the grand son of Janak Singh (Pritam Singh being the daughter's Son of Janak Singh) could not be bound for ever to be not alienating his share of the properties to strangers. The trial court granted the prayer of the assignees. The appeal of Gurdial Singh and Jeevan Singh, plaintiffs (represented by their LRs), before the Additional District Judge failed on both counts and the High Court dismissed their revision petition in limine, which has given cause to them to appeal to this Court.

We could have arrived at the conclusion, which we are about to, by treading on two different parts. One was the way in which the trial court and the Additional District Judge have been led to in pronouncing on the two contentions raised as to the nature of assignment of a decree, being property or not; and the interpretation of paragraphs 13 and 14 of the settlement deed. The other was in treating the assignment as non est because of the clear prohibition of the trial court to the parties from alienating or transferring in any manner any part of the property involved in the suit. Having heard learned counsel for the parties at great length and having examined the settlement deed as also the assignment, we are of the view that it would be far more prudent to tread the second path and to arrive at the conclusion laying the matter back to the trial court for finalisation of the suit by passing a final decree for partition.

As said before, the assignment is by means of a registered deed. The

- A assignment had taken place after the passing of the preliminary decree in which Pritam Singh has been allotted 1/3rd share. His right to property to that extent stood established. A decree relating to immovable property worth more than hundred rupees, if being assigned, was required to be registered. That has instantly been done. It is per se property, for it relates
- B to the immovable property involved in the suit. It clearly and squarely fell within the ambit of the restraint order. In sum, it did not make any appreciable difference whether property per se had been alienated or a decree pertaining to that property. In defiance of the restraint order, the alienation/assignment was made. If we were to let it go a such, it would
- C defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seizin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not
- D taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees—respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders. The principles of lis pendens are altogether on a different footing. We do not propose to examine their involvement present-
- E ly. All what is emphasised is that the assignees in the present facts and circumstances had no cause to be impleaded as parties to the suit. On that basis, there was no cause for going into the question of interpretation of paragraphs 13 and 14 of the settlement deed. The path treaded by the courts below was, in our view, out of their bounds. Unhesitatingly, we upset
- F all the three orders of the courts below and reject the application of the assignees for impleadment under Order 22 Rule 10 C.P.C.

For the foregoing reasons, we allow this appeal with costs.

- G Before parting with the judgment, we must express our sense of anguish in this matter, lying pending in the Civil Court at Patiala since the year 1948, with no sight of its finalisation, when half a century is about to expire. It tells adversely, not only the system, but in the slow and tardy way in which proceedings in the suit have gone on. We therefore request the High Court of Punjab and Haryana to depute its Registrar to oversee
- H proceedings in the suit so that its progress is kept reported to him from

time to time. We direct the trial court to dispose of the suit as expeditiously as possible, but in all events, before the onset of the summer vacation of the years 1996. The trial court may resort to day today hearing in the matter, if considered necessary. A

In view of the decision in the Civil Appeal, no orders are necessary in the special leave petition as also in the contempt petition. B

R.P.

Appeal allowed.