

[2011] 4 S.C.R. 215

GANESH (D) BY LRS. & ORS.

v.

ASHOK & ANR.

(Civil Appeal No(s). 5514 of 2005)

APRIL 4, 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

**PARTITION:**

*Family settlement – Land gifted to sons of pre- deceased son of the tenure-holder – Later, by way of a family settlement other agricultural lands settled amongst other heirs – Decree in a civil suit passed in terms of the settlement – Subsequent suit by sons of the deceased son for declaration of decree in earlier suit as null and void – Held: Lands with the tenure-holder were not ancestral property – A family settlement is not a transfer of property – The first appellate court rightly held that the family settlement was bona fide to avoid dispute in the family – High Court, in second appeal, was not justified in setting aside the finding of fact recorded by the first appellate court, which was the last court of facts – Judgment of High Court set aside and that of first appellate court restored – Code of Civil Procedure, 1908 – s.100 – Second appeal – Scope of – Transfer of property – Family settlement, not transfer of property.*

**The plaintiffs-respondents, who were the sons of the pre-deceased son of defendant no. 1, while they were minors, filed a suit through their mother for declaration that the decree passed in Civil Suit No. 476 of 1978 be declared as null and void and a declaration be made that the plaintiffs had a right to inherit the suit land on the death of defendant No. 1 and in the alternative for declaration that the alienation of the suit land made by defendant no. 1 in favour of defendants nos. 2 to 5 by the**

**A** judgment and decree in the said suit was null and void. The defendants contested the suit contending that the plaintiffs had already been gifted certain agricultural lands; and in order to avoid dispute in the family, defendants nos. 2 to 5 were given the lands under a family settlement. The trial court decreed the suit, but the first appellate court dismissed the suit. However, the High Court, in second appeal, reversed the judgment of the first appellate court. Aggrieved, the defendants filed the appeal.

**C** Allowing the appeal, the Court

**D** HELD: 1.1. The judgment of the High Court cannot be sustained. It is well settled that the High Court in second appeal cannot interfere with the findings of fact of the first appellate court. The first appellate court held that the land with the tenure-holder was not the ancestral property and there was no proof that the land descended from his father. [para 12-13] [220-D-F]

**E** 1.2. A family settlement is not a transfer of property, as rightly held by the first appellate court. The first appellate court held that the family settlement was bona fide to avoid disputes in the family. The decree in Civil Suit No. 476 of 1978 was only in pursuance of that family settlement and, therefore, it could not be interfered with.

**F** A perusal of the judgment of the first appellate court which was the last court of facts indicates that the findings of fact given by it are based on relevant evidence. Therefore, the High Court was not justified in interfering with those findings. [para 14-15] [220-G-H; 221-A-B]

**G**

1.3. The impugned judgment and order of the High Court is set aside and that of the first appellate court restored. [para 16] [221-C]

**H**

*Kale & Ors. vs. Deputy Director of Consolidation* 1976 (2) SCR 202 =AIR 1976 SC 807 - cited A

**Case Law Reference:**

1976 (2) SCR 202 Cited Para 11

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5514 of 2005. B

From the Judgment & Order dated 29.3.2005 of the High Court of Punjab & Haryana at Chandigarh in Regular Second Appeal No. 476 of 1984. C

Ajay Majithia, R.S. Ahuja, Rajesh Kumar, Dr. Kailash Chand for the Appellants.

Shivaji M. Jadhav for the Respondents. D

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. This appeal has been filed against the judgment and order dated 29.3.2005 of the Punjab & Haryana High Court at Chandigarh in Regular Second Appeal No. 476 of 1984. E

2. Heard learned counsel for the parties and perused the record.

3. The respondents herein filed a Civil Suit being No. 58 of 1980 with a prayer that the judgment and decree passed in Civil Suit No. 476 of 1978 titled Jagbir and others vs. Ganeshi and others dated 27.10.1978 relating to the suit land be declared null and void and a declaration be given that the plaintiffs have a right to inherit the suit land on the death of defendant No. 1 and in the alternative for declaration that the alienation of the suit land made by defendant No. 1 in favour of defendants 2 to 5 by the aforesaid judgment and decree dated 27.10.1978 is null and void being against the custom and F  
G  
H

A will not operate against the right for succession of the plaintiffs and other heirs of defendant No. 1 on his death. Plaintiffs Nos. 1 and 2 were minors and the suit was filed on their behalf by the mother Smt. Padam Devi who was also one of the plaintiffs.

B 4. The case of plaintiff Nos. 1 and 2 was that they are the sons of one Ramgopal and Padam Devi, widow of deceased Ramgopal. It was alleged that the plaintiffs as well as the other defendants were the descendants of defendant No. 1 as given in the pedigree table given in para of the plaint. The plaintiffs  
 C Nos. 1 and 2 are minors and they filed the present suit through their mother Smt. Padam Devi. It was alleged that defendant No. 1 is a Hindu Jat and is governed by the agricultural custom according to which ancestral immovable property cannot be alienated except for legal necessity and consideration.

D 5. It was alleged that defendant No. 1 Ganeshi had three sons, being Ramgopal, Dharambir and Jugal. Ramgopal , father of the plaintiffs died some years ago. It was also alleged that defendant No. 1 was under the influence of his surviving sons namely, Dharambir and Yugal Kishore @ Jugal Singh.  
 E Defendant No. 2 is the son and defendant No. 3 is the wife of Dharambir. Defendant No. 4 is the son and defendant No. 5 is the wife of Yugal Kishore @ Jugal Singh.

F 6. It was alleged that a month before filing of the plaint, the plaintiffs came to know the that in order to deprive them of their right to inherit the suit land on the death of defendant No. 1, defendant Nos. 2 to 5 filed a collusive suit against defendant No. 1 bearing suit No. 476 of 1978 in the Court of sub-Judge, IInd Class, Palwal for declaration that they are owners of the suit land. Defendant No. 1 suffered that decree against him on  
 G his admission on 27.10.1978. It was alleged that the said decree could not extinguish the rights of ownership of the plaintiffs in respect of the suit land, and it was null and void and would not operate against the plaintiff's right of succession on the death of defendant No. 1. It was further alleged that plaintiffs  
 H Nos. 1 and 2 are sons of Ramgopal and the land is ancestral

property. According to agricultural custom defendant No.1 A  
could not transfer the suit land in favour of defendant Nos.2 to  
5 who were not his heirs to the exclusion of the plaintiffs who  
were his heirs. It was further alleged that, in the alternative, the  
said decree amounts to alienation and without consideration  
and legal necessity. It was alleged that defendants Nos.6 & 7 B  
have colluded with defendant Nos.1 to 5.

7. The defendants contested the suit. It was alleged in the  
written submissions that defendant No. 1 did not transfer and  
alienate the land in suit in favour of the answering defendants, C  
but the suit land was settled on them by way of family  
settlement arrived at between the defendants. Some agricultural  
land was already gifted by defendant No.1 in favour of plaintiffs  
Nos.1 and 2. It was because of that reason that the family  
settlement was arrived at in order to avoid family dispute. D

8. It was alleged that since defendant No.1 gifted some of  
his land in favour of plaintiff Nos.1 & 2, this resulted in a family  
unrest and hence defendant No. 1 pacified all the members of  
the family by way of a family settlement. It was denied that the  
land was ancestral. It was also denied that defendant No.1 was E  
under the influence of his surviving sons.

9. The trial court decreed the suit holding that the judgment  
and decree dated 27.10.1978 amounts to alienation and without  
consideration and legal necessity. It was held that the decree  
created new rights in defendants Nos.2 to 5, and it cannot be F  
said to be based on family settlement. Any alienation of  
immovable property of value of Rs. 100/- had to be registered  
and in the present case, the alienation is not by a registered  
document. G

10. The trial court held that the suit land was ancestral  
property of Ganeshi qua the plaintiffs. This finding is based on  
admission of Ganeshi that he has inherited the property from  
his father Pran Sukh. The trial court also held that defendant  
No.1 was governed by the custom in the matter of alienation, H

A and under that custom ordinarily ancestral immovable property is inalienable except for legal necessity or with the consent of the male lineal descendants.

B 11. The defendants filed an appeal which was allowed by the first appellate court by the judgment of the District Judge, Faridabad dated 2.11.1983. The first appellate court held that plaintiffs Nos.1 & 2 (respondents in the first appeal) was given land in 1969 by way of gift by Ganeshi and because of this there was some unrest in the family, and hence the family settlement was made. The first appellate court relied upon the judgment of this Court in *Kale & Ors. vs. Deputy Director of Consolidation* AIR 1976 SC 807 which held that in order to sustain a family settlement it is not necessary that there must be evidence of antecedent title of the parties.

D 12. The first appellate court held that the land was not ancestral property of Ganeshi because there was no proof that the land had descended from the father of Ganeshi. It was held that Ganeshi held the land in question along with some co-sharer's who acquired the same in whatever manner after the death of Bhim Kaur.

F 13. In second appeal, the High Court has set aside the judgment of the first appellate court and restored the judgment of the trial court. In our opinion, the judgment of the High Court cannot be sustained. It is well settled that the High Court in second appeal cannot interfere with the findings of fact of the first appellate court.

G 14. A family settlement is not a transfer of property, as rightly held by the first appellate court. The first appellate court held that the family settlement was bona fide to avoid disputes in the family. The decree in Civil Suit No.476 of 1978 was only in pursuance of that family settlement, and hence it could not be interfered with.

H 15. We have carefully perused the judgment of the first

appellate court which was the last court of facts and we are of the opinion that the findings of fact given by it are based on relevant evidence. Hence the High Court was not justified in interfering with those findings. A

16. For the foregoing reasons, the appeal is allowed. The impugned judgment and order of the High court is set aside and that of the first appellate court is restored. There shall be no order as to costs. B

R.P.

Appeal allowed.