

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.529 of 1988 (O&M)
Date of Decision: 09.12.2015

Chetan Singh (through LRs)

. . . . Appellant

VS.

Ujagar Singh & Ors.

. . . . Respondents

CORAM: HONBLE MR.JUSTICE SURYA KANT

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present: Mr. Manoj Pundir, Advocate for the appellant

Mr. ML Saggar, Senior Advocate with
Mr. Sunny Saggar, Advocate for the respondents

SURYA KANT J. (ORAL)

(1). This Regular Second Appeal is directed against the judgement and decree dated 29.03.1985 passed by Civil Court, Kharar which has been duly upheld by the First Appellate Court vide judgement and decree dated 30.10.1987. The Courts below have vide the impugned judgements decreed, the Civil Suit for declaration to the effect that the respondent-plaintiff is joint owner in possession of 1/4th of the suit land out of the share of Chetan Singh (since deceased).

(2). The plaintiff-respondent is son of Chetan Singh, namely, defendant No.1. Defendant No.2 & 3 are also sons of Chetan Singh i.e. brothers of respondent-plaintiff. Respondent No.4 is United Commercial Bank of India, Landran Branch. The respondent's case was that the suit land is their ancestral property owned by Amar Singh who had four sons including Chetan Singh. Vide a consent decree passed by Civil Court,

1/5th part of the land of Amar Singh fell to the share of Chetan Singh whereas the remaining 4/5th went to his three brothers. The consent judgement and decree (Ex.P6 & P7) were given effect in the revenue record and mutation was duly sanctioned (jamabandi Ex.P4). On this premise, the respondent-plaintiff claimed a pre-existing right in the suit land which was stated to be joint Hindu family property of coparcenary character.

(3). Defendant No.2 Malaghar Singh had taken loan against the suit land from United Commercial Bank of India (defendant No.4) for which their father Chetan Singh stood as a guarantor. As the payment of loan was defaulted, the plaintiff apprehended that in execution of money decree obtained by the bank, the entire land including his share may not be sold, hence the Civil Suit was filed.

(4). The Courts below have concurrently held that (i) the suit property was originally owned by Amar Singh – grandfather of respondent-plaintiff and the appellants; (ii) it was a joint Hindu Family property of coparcenary character; (iii) respondent-plaintiff had a pre-existing right in the suit land; and (iv) the loan, if any, taken against that land was not to affect the rights of Bank or the respondent-plaintiff. In other words, the respondent-Bank was permitted to effect recovery of loan amount against share of loanee and/or guarantor save the share of respondent-plaintiff was duly protected.

(5). The father, namely, Chetan Singh – defendant No.1 fell aggrieved and preferred this Regular Second Appeal.

(6). Heard learned counsel for the parties at a considerable length and perused the record.

(7). The record reveals that this Court did not grant any *ad interim* stay. The respondent-Bank was permitted by the Courts below to effect recovery of loan amount from the loanee and the guarantor out of their share in the land. During the pendency of this appeal, the guarantor, namely, the father of the parties Chetan Singh has died. Malaghar Singh – the loanee has come forward as a legal representative of the deceased to pursue this appeal.

(8). It can be safely inferred that by now the respondent-Bank must have recovered the due amount and has lost interest in pursuing the instant appeal.

(9). As regards the solitary plea taken by the appellant that the loan was taken for the legal necessity of the joint Hindu family, it is essentially a question of fact which could not be proved before the Courts below for want of cogent evidence. Further, the loan for the benefit of the family could be taken by its Karta, namely, Chetan Singh and not by defendant No.2 – his son. Such a question of fact surely cannot be treated as a substantial question of law warranting adjudication by this Court.

(10). For the reasons afore-stated, there is no merit in the instant appeal which is accordingly dismissed.

0912.2015
vishal shonkar

(Surya Kant)
Judge