

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.778 of 1988 (O&M)
Date of Decision: July 01, 2015

Mohinder Singh

...Appellant

Versus

Gulzar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashok Singla and Mr.Aakash Singla, Advocates
for the appellant.

Mr.M.S.Rakkar, Senior Advocate with
Mr.K.G.Chaudhary, Advocate
for the respondents.

INDERJIT SINGH, J.

Appellant-plaintiff Mohinder Singh has filed this regular second appeal against respondents-defendants Gulzar Singh and others, challenging the impugned judgment and decree dated 26.09.1987 passed by learned Addl. District Judge, Ludhiana, vide which the judgment and decree dated 23.11.1985 passed by learned Addl. Senior Sub Judge, Samrala, decreeing the suit of the plaintiff, was set aside and suit of the plaintiff was dismissed.

The brief facts of the case are that plaintiff Mohinder Singh filed suit against Gulzar Singh and others for possession of land measuring 16 kanal 5 marla being 1/3rd share of land measuring 48 kanal 15 marla as fully described in the head note of the plaint, by

partition of 1/3rd share of house as the property detailed above is joint Hindu family coparcenary ancestral property and the Will dated 29.06.1976 is null and void, having not been executed by deceased Puran Singh. However, if execution of Will is proved then Puran Singh was not competent to will away the property.

As per the case of the plaintiff, Puran Singh father of the parties was recorded as sole owner of the land and the houses. The land and houses were ancestral joint Hindu family coparcenary property, of which the plaintiff was a coparcener. After the death of Puran Singh, plaintiff and defendants No.1 and 2 being the coparceners, inherited the property to the extent of 1/3rd share each. However, defendants No.1 and 2 got the mutation sanctioned in their favour on 31.05.1982 without any notice to the plaintiff or anybody else, allegedly on the basis of a Will dated 29.06.1976, which is forged and fictitious document having not been executed by Puran Singh and it is result of fraud by putting some other person in place of Puran Singh and surrounded by suspicion. It is also the case of the plaintiff that Puran Singh was incompetent to will away the joint Hindu family and ancestral coparcenary property. It is also the case of the plaintiff that on coming to know about the mutation in favour of defendants No.1 and 2, he reported the matter to the police, where under threat and coercion, the police got his thumb impressions on the alleged agreement/compromise dated 20.03.1983, which is not the outcome of free mind of the plaintiff and not binding upon him.

The pedigree table has also been given, according to which, Puran

Singh is son of Bakhshish Singh son of Sela Singh. Puran Singh had two wives namely Marho, who is now dead from whose womb Mohinder Singh was born and Ajmer Kaur is other widow of Puran Singh, who is alive and from the loins of Ajmer Kaur and Puran Singh, defendants Gulzar Singh, Avtar Singh, Swaran Kaur, Mohinder Kaur, Mukhtiar Kaur and Surinder Kaur were born.

On the other hand, the case of the defendants is that plaintiff has no locus standi to file the suit and has no cause of action etc. On merits, defendants denied the plaintiff to be son of Puran Singh. The defendants also set up a Will dated 29.06.1976. They have also denied the property to be joint Hindu family coparcenary property or the plaintiff being a coparcener. According to them, Puran Singh was the exclusive owner of the land in dispute and they have denied the relationship of the plaintiff with Puran Singh.

The following issues were framed:-

1. *Whether the property in dispute is ancestral and joint Hindu Family Coparcenary property?OPP*
2. *Whether the plaintiff is entitled to any share in the property as coparcener, if so how much?OPP*
3. *Whether the suit is bad for misjoinder of parties?OPD*
4. *Whether the suit is not maintainable in the present form?OPD*
5. *Whether the plaint is not property valued for the purpose of court fee and jurisdiction?OPD*
6. *Whether deceased Puran Singh had executed a valid will in favour of defendants No.1 and 2. If so its effect?OPD*
7. *Relief*

Both the parties led oral as well as documentary evidence. On the basis of the evidence, learned Addl. Senior Sub Judge, Samrala, decreed the suit of the plaintiff vide judgment and decree dated 23.11.1985. The Court on the basis of evidence held that plaintiff is son of Puran Singh and suit property is joint Hindu Family ancestral property and the Will is surrounded by suspicious circumstances. Aggrieved from the above-said judgment and decree, Gulzar Singh and another filed the appeal. Learned Addl. District Judge, Ludhiana accepted the appeal vide judgment and decree dated 26.09.1987 and set aside the judgment and decree dated 23.11.1985. It is held by learned Addl. District Judge, Ludhiana that Will is valid document and further held that Mohinder Singh is not son of Puran Singh and the suit property is not a joint Hindu family ancestral and coparcenary property.

Aggrieved from above judgment and decree dated 26.09.1987, present regular second appeal has been filed and following substantial question of law arose in this appeal:-

1. *Whether reversal of the well reasoned judgment and decree of the Ld. T/C by the Ld. Lower Appellate Court is based upon surmises and conjectures and is result of misreading, misconstruing and also illegally ignoring the evidence on record and the findings of Ld. Lower Appellate Court are perverse?*
2. *Whether the findings of the Ld. T/C regarding plaintiff/appellant Mohinder Singh to be son of deceased Puran Singh which were based upon oral/opinion evidence and also the documentary evidence in the shape of unchallenged mutation and Jamabandi Ex.P11 of village Badeenpur, voter list Ex.P-3 and P-17 of the year 1980, passport of 1977 Ex.P15, Govt. School Entries of 1955 proved by*

Sumer Chand head teacher PW-4/30 years old record, alleged compromise deed dated 22.03.1983 Ex.P12, could have been reversed simply on the ground that appellant did not plead and prove that his mother Marho was legally wedded wife of Puran Singh?

3. *Whether the suit land was ancestral land in the hands of Puran Singh and was ancestral and coparcenary property of the plaintiff and his brothers defendants No.1 and 2 when the property as such was admitted by DW-1 and DW-5 and is proved to be sold from jamabandis since 1909-10?*
4. *Whether the alleged Will dated 29.06.1976 Ex.D1 which was rightly ignored by Ld. T/C being not proved to have been validly executed and being of suspicious nature, has wrongly been believed by the Ld. Lower Appellate Court especially when execution of the same is also not proved to be in the terms of Section 63(c) of the Indian Succession Act?*
5. *Whether Puran Singh in view of Section 30 of the Hindu Succession Act, was not debarred from allegedly executing the Will?*
6. *Whether the estate of Puran Singh of Village Bullepur should also be mutated on the basis of Section 6 and 8 of Hindu Succession Act when his estate of village Badeenpur is so mutated in favour of the appellant and his brothers/defendants and disputing the estate of village Bullepur by the defendants does not attract the principal of estoppels?*
7. *Whether the Ld. Lower Appellate Court has acted illegally and its findings are contrary to law and facts and are perverse and it has travelled beyond the issues?*

Additional substantial question of law:-

8. *Whether the plaintiff appellant is entitled to share the estate of deceased Puran Singh even if for the sake of argument he is considered to be illegitimate son because of alleged non proof of valid marriage of Puran Singh with Marho?*

I have heard learned counsel for the parties and have

gone through the record.

From the record, first of all, as regarding the fact whether Mohinder Singh is son of Puran Singh or not, there is oral as well as documentary evidence produced by the plaintiff. Mohinder Singh appeared into the witness box and deposed as per his version and he also examined other witnesses regarding this fact. He deposed that Puran Singh had two wives i.e. Marho and Ajmer Kaur. From the loins of Marho and Puran Singh, plaintiff Mohinder Singh was born and from the loins of Ajmer Kaur and Puran Singh, Gulzar Singh and other defendants were born. PW-2 Gurmel Singh also deposed similar facts. PW-6 Sher Singh also deposed that Mohinder Singh is son of Puran Singh. There is Jamabandi Ex.P11 relating to land of Puran Singh in village Badeenpur. In the remarks column it is written that land in the name of Puran Singh in that village stood mutated in the name of plaintiff Mohinder Singh as well as his two brothers Gulzar Singh and Avtar Singh in equal share. The second document is photocopy of the passport Ex.P15 wherein Mohinder Singh has been shown to be son of Puran Singh. Ex.P3 is the voter list and Ex.P17 is another voter list, in which Mohinder Singh has been shown to be son of Puran Singh. These voter lists further show that voter list is for the house No.40 and all other family members of Puran Singh are shown along with Mohinder Singh and Mohinder Singh has been shown as son of Puran Singh. PW-4 Semer Singh, Head Teacher Government Primary School has also appeared with the record showing that Mohinder Singh got admitted in the school on 28.03.1955 and his

father name is stated to be Puran Singh and admission form bears the thumb impression of Puran Singh. This document is thirty years old and came into existence much before the dispute.

Again the document Ex.P12, which, according to the plaintiff, has been got executed under threat by defendants No.1 and 2 in the presence of police, also nowhere shows that plaintiff is not son of Puran Singh. In that document Ex.12, Mohinder Singh has been written as son of Puran Singh. Authenticity of the documents produced by the plaintiff cannot be discarded because these documents are much earlier to the period when the dispute arose between the parties. Learned Addl. Senior Sub Judge, Samrala has correctly returned the finding that plaintiff Mohinder Singh is son of Puran Singh. The other oral evidence has also supported the version of the plaintiff that he is son of Puran Singh. The findings given by learned Addl. District Judge, Ludhiana that plaintiff has not pleaded in his plaint that Marho was legal widow of Puran Singh or he is son of Puran Singh from Marho etc., are not as per law. When the pedigree table has been given in the plaint, then it will be part of the pleadings. The mere fact that one of the witness has not stated the name of the mother of the plaintiff as Marho, is no ground to discard the oral as well as cogent documentary evidence on the record. Therefore, the findings given by learned Addl. District Judge, Ludhiana that Mohinder Singh is not son of Puran Singh, are set aside. The findings given by learned Addl. Senior Sub Judge, Samrala are correct, as per evidence and law.

Now coming to the nature of the suit property, I find that admittedly the plaintiff is alleging that suit property is ancestral coparcenary property of plaintiff along with defendants No.1 and 2. As regarding the property to be held as ancestral coparcenary property, it can be held on the basis of revenue record. The plaintiff has placed on record jamabandi Ex.P2, Ex.P5 to P11 and Ex.P19 to Ex.P22 and Ex.D4. Earliest record is of jamabandi Pamaish Ex.P6 for 1909-10, in which Bakshish Singh and Bhagwan Singh sons of Bela Singh are recorded as owners and the same entry is repeated in Jamabandi Ex.P7 for 1929-30, with this exception that in this jamabandi, Surjan Singh etc. are recorded as vendees from Bhagwan Singh in respect of khasra No.527 measuring 14(14-0). In jamabandi Ex.P8 for the year 1933-34, Puran Singh, Arjan Singh and Surjan Singh son of Bakshish Singh and their uncle Bhagwan Singh are recorded as co-owners to the extent of half share each and entry regarding sale by Bhagwan Singh of Khasra No.527 to Puran Singh etc. continues. In the jamabandi for the year 1944-45 Ex.P9, Puran Singh and his brothers Surjan Singh and Arjan Singh are shown to be owners in equal shares.

Learned Addl. District Judge, Ludhiana, after appreciating the revenue record, held that land of these jamabandis, since 1962-63, is not connected with the previous land which continued till 1944-45. It is also observed that consolidation record was not produced and there is no document on record to show that disputed land was carved out during consolidation process in lieu of the land once

owned by Bakhshish Singh and Bhagwan Singh sons of Bela Singh. The mutation regarding inheritance of Bhagwan Singh and Arjan Singh have also not been placed on the record. Learned Addl. District Judge, from the revenue record also, held that land of Jamabandi Ex.P6 from 1909-10, is not traced from Bela Singh, who was the father of Bakhshish Singh and Bhagwan Singh. There is nothing on the record as to how Puran Singh got separate land as depicted in jamabandi Ex.P20 for the year 1962-63.

The findings given by learned Addl. District Judge, Ludhiana that plaintiff failed to prove that property is ancestral coparcenary property, are correct and as per evidence on record. Therefore, these findings regarding the fact that suit property is not a joint Hindu family ancestral coparcenary property, are upheld.

As regarding the execution of the Will, I find that the Will has been executed by Puran Singh in favour of defendants No.1 and 2 i.e. Gulzar Singh and Avtar Singh. It is written in the Will that he is bequeathing his property in favour of his two sons as they were serving him. The Will is a registered document. The Will is scribed by Deed Writer Mastan Singh and he has appeared in the witness box as DW-2. Sadhu Singh and Mohinder Singh are the attesting witnesses, who appeared as DW-3 and DW-4 to prove the execution of the registered Will Ex.D1. No suspicious circumstance has been pointed out at the time of arguments. The mere fact that Puran Singh aged about 85 years, is no ground to infer that he was not of sound mind. He has appeared before Sub-Registrar for registration of the Will.

The Deed Writer and the attesting witnesses have deposed regarding the execution of the Will by Puran Singh as per law. No evidence on record has been produced by plaintiff Mohinder Singh to show that Puran Singh was not of sound mind.

Again, another fact that mutation has been got sanctioned in haste, also cannot be held as suspicious circumstance surrounding the Will. Again the fact that as to why Puran Singh has excluded his son Mohinder Singh, daughters and his widow, I find that this Will is executed in the year 1976. It is a registered Will and Puran Singh died after six years i.e. in 1982. It is in the evidence that Mohinder Singh mainly remained in foreign country for earning livelihood, which means that he was not serving Puran Singh at that time. That may be the reason for excluding Mohinder Singh. Again, when the Will was executed, at that time, it was mind set of an agriculturist that agricultural land should go to the sons only and not to the daughters. Therefore, only on this ground that they have been excluded, the Will cannot be held as surrounded by suspicious circumstance. The findings given by learned Addl. District Judge, Ludhiana, upholding the validity of the Will, are correct, as per law and evidence.

As regarding the compromise, no reliance can be placed on this document because the plaintiff is challenging that this document has been got executed under pressure by the police, whereas, the defendants are denying the execution of this compromise, so both the parties are not relying upon this compromise.

From the above discussion, I find that substantial question of law No.2 is decided in favour of the appellant and rest all other substantial questions of law i.e. No.1, 3 to 8, are decided against the appellant.

In view of the above, I find that except the modification in the findings that Mohinder Singh is son of Puran Singh, there is no merit in the appeal. The suit property is not joint Hindu family ancestral and coparcenary property. Puran Singh had executed valid Will in favour of defendants No.1 and 2. Therefore, the plaintiff is not entitled to any share in the property either as coparcener or natural heir.

Therefore, finding no merit in the present regular second appeal, the same is dismissed with the above-said modification.

July 01, 2015
Vgulati

(INDERJIT SINGH)
JUDGE