

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 2002 of 1989
Date of Decision: 13.02.2015

Pargat Singh and others

....Appellants

Versus

Suba Singh and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Ashok Verma, Advocate
for the appellant.

Mr. K.G. Chaudhary, Advocate
for the respondents.

SNEH PRASHAR, J.

1. Assailing the judgment and decree dated 02.06.1989 passed by Learned Additional District Judge, Amritsar, dismissing the appeal preferred by Pargat Singh and others (plaintiffs/appellants) the instant regular second appeal was filed.

2. The facts which need elaboration are as under:

Pargat Singh and others (plaintiffs/appellants), who were minors, filed a suit through their mother-next friend/natural guardian Mohinder Kaur, for possession of the land measuring 81 Kanals 12 Marlas (detail of which was given in the head note of the plaint) situated in Village Rani Wallah, Tehsil Tarn Taran (hereinafter

referred to as the suit land) on the ground that their father Jarnail Singh (respondent-defendant No.5) had sold the same to Suba Singh and others (respondents-defendants No.1 to 4) without legal necessity which amounted to an act of wanton waste.

The plaintiffs averred that they along with their father Jarnail Singh constituted a joint Hindu Family. The suit land was joint Hindu family property which their father Jarnail Singh alienated vide two registered sale deeds dated 06.07.1979 and 07.07.1979, without any legal necessity or for the benefit of the estate. It was also alleged that the suit land was earlier mortgaged by Jarnail Singh. The said mortgage as well as the aforesaid sale deeds were without consideration. Submitting that Jarnail Singh had no right to alienate the suit land without their consent and the sale deeds had no binding effect upon their rights, the plaintiffs prayed for a decree for possession in respect of the suit land.

3. Defendants No.1 to 4 contested the suit by filing a written statement. They denied that the plaintiffs and Jarnail Singh constituted a Joint Hindu Family or that the suit land was held by the family as such. They pleaded that the suit land was sold to them by Jarnail Singh for consideration and the sale was for legal necessity. Immediately, after sale of the suit land, Jarnail Singh had purchased 74 Kanals, 16 Marlas of land from Mehar Singh and Kehar Singh sons of Jagat Singh, resident of Sabra, vide registered sale deed dated 09.07.1979. The mortgage of the suit land prior to sale in their favour was also for a valuable consideration and for legal necessity.

It was further pleaded by the contesting defendants that the plaintiffs being Jats were governed by custom in the matter of alienation of properties. The suit was also said to be not properly valued for the purposes of court fee and jurisdiction.

4. On the pleadings of the parties, the following issues were settled by the trial Court are as under:

1. Whether the plaintiffs and Jarnail Singh, defendant No.5 constitute a joint Hindu family as alleged? O.P.P

2. Whether the land in dispute is coparcenary property qua the plaintiffs in the hands of Jarnail Singh defendant No.5 ?
OPD

3. Whether Jarnail Singh, defendant mortgaged/sold the disputed land in favour of the contesting defendants as alleged?
OPD

4. If the issue No.3 is proved, whether mortgaged sale of the disputed land was for consideration and legal necessity? OPD

5. Whether the plaintiffs have no locus standi to file the present suit? OPD

6. Whether the plaintiffs and defendant No.5. are jats, governed by customs in matters of alienation and inheritance? OPD

7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD

8. Relief.

Both the parties adduced oral and documentary evidence to substantiate their rival claims.

5. Considering the evidence of the parties and the submissions made on their behalf learned trial Court finding that the family constituted by the plaintiffs and Jarnail Singh was a joint Hindu family and that the suit land was an ancestral property in the hands of Jarnail Singh decided issues No.1 and 2 in favour of the plaintiffs. The mortgage deeds Ex.D4 and Ex.D5 as well as the sale deeds Ex. D1 and Ex.D2 dated 06.07.1979 and 07.07.1979 were held to have been executed by Jarnail Singh for consideration and for legal necessity and hence, were an act of good management on the part of Jarnail Singh and accordingly issues No.3 and 4 were resolved in favour of the respondents. Although rest of the issues were settled in favour of the plaintiffs but as an over all effect of the decision of the issues the suit of the plaintiffs was dismissed with costs by the learned Additional Senior Sub Judge, Tarn Taran vide judgment dated 05.06.1986.

Feeling aggrieved by the judgment and decree passed by learned trial Court, the plaintiffs preferred a first appeal which was dismissed by the learned Additional District Judge, Amritsar, vide judgment and decree dated 02.06.1989. An application under Order

41 Rule 27 of the Code of Civil Procedure (for short 'CPC') filed by the plaintiffs for producing additional evidence was dismissed and another application under Order 14 Rule 5 CPC for bifurcation of Issue No.4 was also dismissed vide the same judgment.

The plaintiffs, still unsatisfied by the said judgment, are here before this Court in second appeal.

6. Submissions made by Mr. Ashok Kumar Verma, learned counsel representing the plaintiffs and Mr. K.G. Chaudhary, learned counsel representing the defendants have been heard and the record has been examined.

7. At the very outset learned counsel for the plaintiffs pointed out that both the Court below have concurrently held that the plaintiffs and their father Jarnail Singh constituted a joint Hindu family and that the suit land was an ancestral property in the hands of Jarnail Singh, having inherited the same from his grand father Bhagat Singh. The plaintiffs being coparceners had acquired a right in the suit land by birth. It is a settled proposition of law that there lies no absolute power for disposal of a coparcenary property even to the extent of his own share, with the *Karta* of a joint Hindu family.

8. Learned counsel asserted that it had come in evidence that Jarnail Singh had various vices. He was an alcoholic and opium addict. The charge of mortgage created on the suit land and thereafter, sale of the suit land by Jarnail Singh was an act of wanton waste. There was no such legal necessity of the family which could justify the sale of the suit land by Jarnail Singh. The only source of

livelihood of the minors was the suit land and by sale Jarnail Singh had completely deprived them of the same.

9. The arguments of learned counsel for the appellant were emphatically controverted by the learned counsel for the defendants/respondents. He submitted that there is ample evidence on record to prove that the sale of the suit land by Jarnail Singh to defendants No.1 to 4 was for consideration and legal necessity i.e., for paying off the debt of mortgage money and for the purpose of purchasing almost equal amount of land for half of the consideration amount in another village, which showed foresightedness and justified the sales on part of Jarnail Singh on the doctrine of benefit of his estate.

10. Indeed, it was mentioned by learned first appellate Court in Para No.8 of the impugned judgment that learned counsel for the plaintiffs had conceded at the Bar before learned trial Court at the time of final hearing of the suit that the two mortgage deeds Ex.D4 and Ex. D5 dated 23.02.1978 and 30.03.1979 for Rs.5,000/- and 18,000/- respectively as well as the sale deeds Ex. D1 and Ex. D2 for a total consideration of Rs.96,000/- were executed by Jarnail Singh on payment of consideration. As far as the fact that the plaintiffs and Jarnail Singh constituted a joint Hindu family was concerned, as indicated above, learned trial Court had held the said issue i.e. issue No.1, in favour of the plaintiffs. The suit land was also held to be ancestral in the hands of Jarnail Singh by deciding Issue No.2 in favour of the plaintiffs. On dismissal of the suit, the plaintiffs, in the

light of decision on issue No.4 against them, preferred the present regular second appeal. However no appeal or cross objections assailing the findings of learned trial Court on issues No. 1 and 2 was preferred by the defendants. Meaning thereby that the decision of learned trial Court on issues No.1 and 2 has already become final.

11. In any case, it may be noticed that Mohinder Kaur(PW1) mother of the minor plaintiffs deposed that the plaintiffs and Jarnail Singh constituted a joint Hindu family. Her statement was corroborated by PW2 Dalbir Singh Lumberdar of the village. Defendant-Ajit Singh stepped into the witness box as DW6 and did not spell out a word to controvert the statement of Mohinder Kaur and Dalbir Singh. In that manner it was almost admitted by the defendants that the plaintiffs with their father Jarnail Singh constituted a joint Hindu family.

12. As regards the plea of the plaintiffs that the suit land was an ancestral coparcenary property in which they acquired a right by birth, the Jamabandi for the year 1955-56 Ex. P4 proved that initially, the suit land was owned by Bhagat Singh and Santa Singh sons of Ganda Singh vide mutation No.2046 Ex.P6. The share of Santa Singh in the suit land devolved upon his brother Bhagat Singh. From the pedgree tables Ex.P1and Ex. P3, it is established that Bhagat Singh was grand father of Jarnail Singh (father of plaintiffs). After Bhagat Singh expired mutation No.2466 Ex. P5 of inheritance qua the suit land was sanctioned in the name of Jarnail Singh and his brother Mohinder Singh. The latest Jamabandi tendered in evidence by the plaintiffs was

for year 1978-79 Ex.P7, according to which Jarnail Singh and his brother Mohinder Singh were recorded as owners of the suit land.

From the documents discussed above, there remains no doubt that the suit land was inherited by Jarnail Singh from his grand father Bhagat Singh and hence, the suit land was ancestral coparcenary property for him and his sons-plaintiffs.

13. The plaintiffs by way of present second appeal have challenged the concurrent findings of learned trial Court and learned first appellate Court that the sale of the suit land by Jarnail Singh to defendants No.1 to 4 was for legal necessity. In this context, the relevant evidence is the ocular testimony of Jarnail Singh DW1, who admittedly was the *Karta* of the joint Hindu family of which the plaintiffs being his sons were the members/coparceners. He admitted that the suit land measuring 81 Kanal and 12 Marlas was sold by him to defendants No.1 to 4 for a total consideration of Rs.96,000/- vide sale deeds Ex. D1 and Ex. D2 dated 06.07.1979 and 07.07.1979 respectively. He further admitted that out of the sale proceeds, he paid a mortgage debt of Rs.23,000/- and just after two days of the sale of the suit land i.e., on 09.07.1979 he purchased 74 Kanals and 16 Marlas of land for a consideration of Rs. 48,000/- vide sale deed Ex.D6.

No evidence could be led by the plaintiffs to prove that the suit land was mortgaged by Jarnail Singh for immoral or illegal purposes. The act of Jarnail Singh also does not indicate that he alienated the suit land in a reckless manner. Apparently, he had

mortgage debt of Rs.23,000/- which he paid out of the sale proceeds and also with just half of the sale amount, he purchased almost equal quantity of land in another village. He was still left with money, as such, needles to say that he utilized the sale consideration amount in the best possible manner for the benefit of the family and the estate. Nothing could be produced by the plaintiffs to prove that the land acquired by Jarnail Singh after sale of the suit land was not an act of good management. Alienation of the joint Hindu family property for purchase of equal amount of other land by no stretch of imagination could be termed as an act of wanton waste. From that, it follows that the sale of suit land by Jarnail Singh was for consideration and also for legal necessity and benefit of his estate.

14. Thus, there being no merit in the appeal, it is hereby dismissed.

February 13, 2015
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[SNEH PRASHAR]
JUDGE