

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: November 18, 2015

1. R.S.A.No.1084 of 1994 (O&M)

Tehal Singh & another

...Appellants

Versus

Shamsher Singh (since deceased) through L.Rs

...Respondent

2. R.S.A.No.4904 of 2002 (O&M)

Shamsher Singh (since deceased) through L.Rs

...Appellant

Versus

Tehal Singh

...Respondent

3. R.S.A.No.1085 of 1994 (O&M)

Tehal Singh & another

...Appellants

Versus

Shamsher Singh (since deceased) through L.Rs

...Respondent

4. R.S.A.No.1086 of 1994 (O&M)

Tehal Singh & another

...Appellants

Versus

Shamsher Singh (since deceased) through L.Rs

...Respondent

5. R.S.A.No.2535 of 2004 (O&M)

Shamsher Singh (since deceased) through L.Rs

...Appellant

Versus

Tehal Singh (since deceased) through L.Rs

...Respondent

6. Contempt Petition No.778 of 2004

Shamsher Singh

...Petitioner

Versus

Tahal Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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.S.D.Sharma, Senior Advocate with
Mr.S.S.Salar, Advocate &
Mr.Abhay Gupta, Advocate,
for the appellants (in RSA Nos.1084 to 1086 of 1994) &
respondents (in RSA Nos.4904 of 2002 & 2535 of 2004) &
for the respondents (in COCP No.778 of 2004).

Mr.H.P.S.Ghuman, Advocate,
for the appellants (in RSA Nos.4904 of 2002 & 2535 of 2004)
and for the petitioner (in COCP No.778 of 2004) &
for the respondents (in RSA Nos.1084 to 1086 of 1994).

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of Regular Second Appeal Nos.1084, 1085 and 1086 of 1994, wherein the appellants are defendants in a suit filed by Shamsher Singh, challenging the collusive decree dated 15.6.1985 and Regular Second Appeal Nos.4904 of 2002 and 2535 of 2004 filed by Shamsher Singh-defendant in the suit filed by the plaintiff vis-a-vis Gair-mumkin Ruri and construction and Contempt Petition No.778 of 2004.

The controversy revolves upon the following substantial question of law:-

“Whether the property at the hands of Tehal Singh measuring 212 kanals 18 marlas was ancestral or not and in case the property has been found ancestral, on the basis of the evidence

produced on record, the aforementioned three appeals, i.e., Nos.1084, 1085 and 1086 of 1994 are liable to be dismissed.”

In order to appreciate the controversy, it would be apt to give brief preface of the matter.

The trial Court decreed the suit, vide judgment and decree dated 15.6.1985, filed at the instance of Nardev Singh in respect of land measuring 119 kanals 8 marlas against Tehal Singh. As a result of the said judgment and decree, Nardev Singh became the exclusive owner of the aforementioned property. It is a matter of record that Tehal Singh, vide gift deed dated 30.1.1970, had gifted 93 kanals 10 marlas out of total land measuring 212 kanals 18 marlas to Nardev Singh. It is the aforementioned judgment and decree and gift deed which were challenged by Shamsheer Singh in a suit filed on 11.9.1986 on the ground that the property at the hands of Tehal Singh was coparcenary and, therefore, he could not have alienated the same except for legal necessity. The plea of coparcenary property was specifically denied by Tehal Singh and as well as Nardev Singh. Since the parties are at variance, the trial Court framed as many as eleven issues and onus of issue as to how suit property was ancestral or coparcenary was placed upon the plaintiff.

The counsel for the plaintiff, vide statement dated 7.9.1987 tendered documents Ex.P1 to Ex.P16 and closed the evidence in affirmative and the aforementioned statement reads thus:-

“Statement of Ld.counsel for the plaintiff on S.A.

I tender into evidence copy of jamabandi for the year 1981-82 Ex.P1, Ex.P2, copy of Mutation No.820 (objected to), Ex.P3, copy of Jamabandi for the year 1953-54 Ex.P4, copy of resolution, Ex.P5, copy of Hakdarwar, Ex.P6, copy of Khatauni Paimaish, Ex.P7, copy of Jamabandi for the year

1959-60 Mark A, copy of Jamabandi for the year 1981-82, Ex.P8, copy of Misal Hakiat, Ex.P9 copy of judgment dt.5.6.85, Ex.P10, copy of decree sheet of the same, copy of plaint dt. 2.4.1985 Ex.P11, copy of written statement Ex.P12, copy of statement Ex.P13, copy of mutation No.1833 Ex.P14, copy of Jamabandi for the year 1981-82 Ex.P15, copy of gift deed Ex.P16 and close plaintiff's evidence in affirmative.”

The trial Court, on the basis of the evidence, decreed the suit and the appeal filed against the same by Tehal Singh and Nardev Singh was dismissed. It is in these circumstances, the aforementioned three Regular Second Appeals have been filed. RSA No.1084 of 1994 with regard to the aforementioned property, RSA No.1085 of 1994 with regard to the suit filed by Shamsher Singh in respect of claiming 1/3rd share in respect of trees and RSA No.1086 of 1994 in respect of claiming 1/3rd share in the tractor Mark-Ford-3600 and electric motor. The trial Court dismissed the suit vis-a-vis tractor and electric motor, whereas the Lower Appellate Court set-aside the judgment and decree of the trial Court.

Vis-a-vis RSA No.4904 of 2002 and RSA No.2535 of 2004, Tehal Singh had filed a suit with regard to the Gair-mumkin Ruri and as well as demolition and construction of the house. The same was decreed by the Lower Appellate Court. It is in these circumstances, Shamsher Singh had filed the aforementioned two Regular Second Appeals.

Mr.S.D.Sharma, learned Senior counsel assisted by Mr.S.S.Salar, Advocate appearing on behalf of the appellants in RSA Nos.1084, 1085 and 1086 of 1994, submits that the admission of the documents would not entail the character and nature of the property being ancestral. The admission was vis-a-vis the existence of the judgment and decree and as well as the jamabandies, i.e., the revenue record. Since onus

of issue No.2 was heavily placed on the plaintiff, but he failed to discharge the same as to whether the property at the hands of Tehal Singh was ancestral in nature or not. He further submits that neither Kursinama or original Intkab nor any mutation in this regard has been placed on record and in support of his contention, has relied upon the judgment of this Court rendered in **Banta Singh and others Versus Phuman Singh s/o Jiwand Singh and others, 1972 PLJ 275**, which lays down that the original excerpt has to be brought on record as per the provisions of Sections 31 and 44 of the Punjab Land Revenue Act, 1887. He further relied upon the provisions of Rules (v) and (vi) of Chapter 9 of High Court Rules and Order, Volume-1 to show the manner and the procedure, the excerpt has to be proved. Since the plaintiff failed to discharge the burden, there was no occasion for the appellant-defendants to rebut the same, thus, both the Courts below have committed illegality and perversity by setting-aside the judgment and decree as well as the gift deed, *ibid*, thus substantial question of law, framed above is liable to be answered in favour of the appellant-defendants.

Mr.H.P.S.Ghuman, learned counsel appearing on behalf of the respondent-plaintiff Shamsher Singh, submits that there was a categorical admission on behalf of Nardev Singh and Tehal Singh in a suit and written statement (Ex.P11 and Ex.P12). Once the character and nature of the property had been proved to be ancestral in nature, no other evidence was required to be proved or led. Even the jamabandies Ex.P1, Ex.P2 and Ex.P3 would reflect that the property had devolved upon Tehal Singh from Baggu. Both the Courts below, while relying upon the aforementioned admission, decreed the suit. Even otherwise, power under Section 100 of the

Civil Procedure Code, cannot be exercised except in a rare of rarest case, where there is a substantial question of law. He further submits that no substantial question of law arises for determination by this Court and, thus, prays for dismissal of the appeals.

I have heard the learned counsel for the parties, appraised the paper book and as well as the records of the Courts below.

The decision of the Regular Second Appeals would revolve upon as to whether the property at the hands of Tehal Singh was ancestral or coparcenary in nature or not. In case, the answer is found to be in affirmative, then RSA Nos.4904 of 2002 and 2535 of 2004 are liable to be allowed and the other appeals are liable to be dismissed.

In order to decide the aforementioned controversy, I would now deal with the contention of Mr.S.D.Sharma. It would be apt to reproduce Rules (v) and (vi) of Chapter 9 of High Court Rules and Order, Volume-1 as to how the excerpt has to be proved. The same read thus:-

“It is also proved in Rule (v) and (vi) of Chapter 9 of High Court Rules and Order, Volume-I as to how excerpt has to be proved. Rule (v) and (vi) aforesaid are reproduced below:-

(v) Excerpt should be a true copy and should be proved. Court must remember that unless proved the excerpt of the Special Kanungo or Patwari Muharrir is not evidence and must not be treated as such. The Special Kanungo or Patwari Muharrir must, when he goes to Court always bring with him the original records from which his excerpt has been complied, so that they may be available for comparison. He must always be put on oath, and be asked to say whether the excerpt is a true copy of a portion of the original records. The excerpts must be a correct copy of such portions of the

records as are relevant and not merely a summary or paraphrase.

(vi) Comparison with original. The Court should, as a rule, compare, with the original records some of the entries in the abstract and initial and date those thus compared.”

Para 232 of the Mullah's Law provides that a person, who asserts that the property at his hands was ancestral in nature, has to prove that it has devolved from three generations, in essence, he should be 4th generation. No documentary evidence, like Intkab or Kursinama has been brought on record to show that the property at the hands of Baggu, the father of Tehal Singh, was ancestral, in essence, it has been brought to the notice of the Court that Mani was father of Baggu. The jamabandies Ex.P1, Ex.P2 and Ex.P3 do not prove that the property had devolved upon Mani Singh and thereafter on Baggu and so on so forth. Shamsheer Singh and Nardev Singh admittedly are sons of Tehal Singh. In the absence of the property being ancestral in nature, the only irresistible conclusion can be drawn that the property at the hands of Tehal Singh was self-acquired. It is settled law that the person, who has acquired the property by dint of his hard labour, can deal with the same in the manner he wants. Mere assertion in the plaint and admission thereof in the written statement would not clothe the nature and the character of the property as ancestral. There has to be a direct, cogent and positive evidence to show that the property at the hands of Tehal Singh was ancestral. As I have already observed, neither the mutation nor Kursinama has been brought on record, in essence, in my view the respondent-plaintiff has failed to discharge the onus on issue No.2.

Keeping in view the aforementioned facts and circumstances,

in my view, the question of law framed above, is answered in favour of the

appellant-defendant and against the respondent-plaintiff, in essence, Regular Second Appeal Nos.1084, 1085 and 1086 of 1994 are allowed. The judgment and decree of both the Courts below are set-aside, whereas Regular Second Appeal Nos.4904 of 2002 and 2535 of 2004 are dismissed on the premise that once it has been held that the property at the hands of Tehal Singh was not coparcenary, therefore, injunction can be issued against third party, in essence, the plea of Mr.Ghuman that no injunction can be issued against the co-owners is hereby declined. Decree-sheet be prepared accordingly.

Consequently, the contempt petition is also dismissed.

November 18th, 2015
ramesh

(AMIT RAWAL)
JUDGE