

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

**Regular Second Appeal No.4325 of 2010 (O&M)
Date of Decision: March 18, 2015.**

Samarvir Kaur @ Surinder Kaur

.....APPELLANT(s).

VERSUS

Sumanjit Kaur and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. M.L. Sarin, Senior Advocate with
Mr. Vijay Sharma, Advocate
for the appellant (s).

Mr. Sajiv Gupta, Advocate
for respondent No.1.

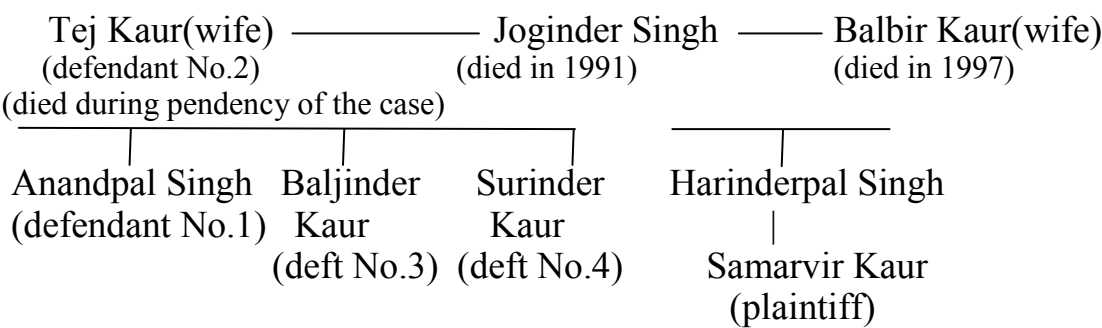
SURINDER GUPTA, J.

Samarvir Kaur @ Surinder Kaur appellant-plaintiff filed suit for declaration challenging unregistered Will dated 24.04.1990 executed by Joginder Singh, father of her deceased husband Harinderpal Singh, in favour of Anandpal Singh his other son, Tej Kaur and Balbir Kaur wives and plaintiff Samarvir Kaur, bequeathing 3/5th share of his property to Anandpal Singh defendant No.1, 1/5th share to his wives Tej Kaur and Balbir Kaur in equal shares and 1/5th share to the appellant-plaintiff as illegal, result of fraud and null and void. Besides challenging the will she also sought the reliefs as follows:

- (i) Mutation No.2625 dated 22.11.1993 in respect of the land of Village Dugal Kalan and mutation No.1940 relating to the land of village Deogarh owned by Joginder Singh sanctioned on the basis of unregistered Will, be declared illegal, null and void;

- (ii) Sale deed No.1931 dated 20.01.1994 of the land situated at village Deogarh owned by Joginder Singh, executed by defendant No.1 Anand Pal Singh in favour of respondent no.4-defendant No.5 Sandeep Singh and the consequent mutation No.1965 be declared as illegal, inoperative, ineffective, null and void qua rights of the plaintiff;
- (iii) Mutation No.3098 of the inheritance of Balbir Kaur wife of Joginder Singh entered in favour of Anand Pal Singh defendant No.1 is illegal, null and void;
- (iv) The plaintiff is entitled to 1/2 share in the entire estate of Joginder Singh and defendant No.1 is also entitled to 1/2 share and the other defendant-respondents have got no right, title or claim in the estate left by Joginder Singh; and
- (v) Defendants No.1, 2 and 5 be restrained from transferring by way of sale, gift, mortgage, lease or in any manner any part of the suit land.

The pedigree table given below will help in understanding the relationship of the parties:-



The case of the appellant-plaintiff, in brief, is that the suit land situated at village Dugal Kalan and Deogarh was joint Hindu family ancestral and coparcenary property in the hands of Joginder Singh, which was inherited after the death of Joginder Singh by Harinderpal Singh and Anandpal Singh, his sons in equal shares. Mutation No.2625 was sanctioned by Assistant Collector 1st Grade, Samana with regard to the land situated at

village Dugal Kalan, to the extent of 3/5 share in favour of Anandpal Singh,

Balbir Kaur and Tej Kaur to the extent of 1/5th share and plaintiff to the extent of 1/5th share. Anandpal Singh also got sanctioned mutation No.1940 with regard to the entire estate of Joginder Singh in village Deogarh in his name, on the basis of his unregistered Will dated 24.04.1990 and further alienated the suit property situated at village Deogarh in favour of Sandeep Singh, respondent No.4-defendant No.5. The land situated at village Deogarh was mutated in favour of defendant No.5-respondent No.4 Sandeep Singh vide mutation No.1965. Anandpal Singh, defendant No.1 got sanctioned another mutation of the estate left by Balbir Kaur on the basis of her registered Will, which was also illegal, null and void.

In nutshell, the appellant-plaintiff claimed 1/2 share in the entire estate owned by Joginder Singh of village Dugal Kalan and Deogarh. Before filing this suit, appellant-plaintiff had filed another civil suit titled “Samarvir Kaur Vs. Anandpal Singh and others” (Civil Suit No.464 dated 17.05.1994), which was withdrawn with the permission to file fresh suit.

The respondents-defendants including Tej Kaur, since deceased, contested the plaintiff's claim by raising preliminary objections that it is barred by time and that a false, frivolous and vexatious claim had been put forth by the appellant-plaintiff. The relationship of the parties was admitted. It was alleged that after the death of Harinderpal Singh son of Joginder Singh in 1980, appellant-plaintiff left the village and started living with her parents at village Ramgarh, Tehsil and District Sangrur. She never came to village Dugal Kalan thereafter. Even at the time of death of Joginder Singh, her father-in-law or Balbir Kaur, her mother in law, she did not attend their last rites.

Regarding the property measuring 2 kanals 18 marlas situated at

village Deogarh, it was alleged that the same was purchased by Joginder Singh and vide his Will dated 24.04.1990, he had bequeathed the same to defendant No.1 Anandpal Singh and mutation No.1940 was rightly sanctioned on the basis of that Will.

The land situated in village Dugal Kalan was admitted to be coparcenary property in which the husband of appellant-plaintiff and defendant No.1 were coparceners with Joginder Singh.

Joginder Singh owned 50 killas of land situated at village Rewar, Tehsil Narwana, District Jind, which was admittedly his self acquired property in which the appellant-plaintiff got 1/5th share. She herself was instrumental in getting mutation of inheritance of land of village Rewar sanctioned. Later on she suffered a statement in respect of her 1/5th share in the land situated at village Rewar, which was about 11 killas, in a collusive suit for declaration filed by tenants over that land. That suit was, however, dismissed by the Court, holding the same as collusive and being an attempt to deprive the State from stamp duty. The appellant-plaintiff has also received consideration of her 1/5th share in the land situated at village Rewar and never filed suit to get back the possession of that land. The Will dated 24.04.1990 has been defended by defendant No.1 as legal, valid and genuine Will executed by Joginder Singh. The appellant-plaintiff had sold land by specific numbers and more than her share in the estate left by Joginder Singh, as such, was left with no right, title or interest in the remaining suit property owned by him. As the owner of the suit property as per Will of Joginder Singh, defendant No.1 had every right to sell the property situated in village Deogarh.

Smt. Balbir Kaur also executed registered Will in favour of

defendant No.1 regarding her estate and mutation No.3098 relating to the inheritance of Balbir Kaur was rightly sanctioned on the basis of that registered will. All the other averments made in the plaint were contested, controverted and denied.

The appellant-plaintiff reasserted her case in the replication and pleadings of the parties led to the framing of following issues:-

- (1) Whether the will dated 24.4.1990 allegedly executed by Joginder Singh son of Ajmer Singh of village Duggal Kalan and resultant mutation No.2625 dated 22.11.1993 are illegal, null and void and are liable to be set-aside? OPP
- (2) Whether the mutation No.1965 of village Deogarh is also liable to be set-aside? OPP
- (3) Whether the sale deed No.1931 dated 20.1.1994 executed by Anandpal Singh in favour of the defendant No.5 is illegal, null and void and is liable to be set-aside? OPP
- (4) Whether the Mutation No.3098 in favour of Anandpal Singh is also liable to be set-aside? OPP
- (5) Whether the suit land is ancestral, joint Hindu family and coparcenary property? If so, its effect? OPP
- (6) Whether the plaintiff is entitled to the possession of 1/2 share of the suit land? OPP
- (7) Whether the plaintiff is entitled to decree for permanent injunction, as prayed for? OPP
- (8) Whether the suit is not maintainable in the present form? OPD
- (9) Whether the suit is barred by limitation? OPD
- (10) Whether the suit of the plaintiff is false, frivolous and vexatious to the knowledge of the plaintiff? OPD
- (11) Whether the plaintiff has got no cause of action to file the present suit? OPD
- (11A.) Whether Joginder Singh son of Ajmer Singh executed an unregistered will dt. 24.4.90 in favour of defendants No.1, 2, plaintiff and Balbir Kaur, if so its effect? OPD
- (12) Relief.

The suit was decreed by Civil Judge (Junior Division), Samana in following terms:-

“In view of my findings on above issues, the suit of the plaintiff for declaration, possession and permanent injunction succeeds and the same is hereby, decreed with costs to the effect that plaintiff is owner to the extent of 1/4 share in the land situated at village Dugal Kalan and 1/6 share in the land situated at village Deogarh and the unregistered will dated 24.4.1990 executed by Joginder Singh in favour of Anandpal Singh is wrong and illegal and has no effect on the rights of the plaintiff. The Mutation No.2625 sanctioned on the basis of said will by A.C. 1st Grade, Samana on 22.11.1993 regarding the land situated at village Dugal Kalan and Mutation No.1940 sanctioned on the basis of said unregistered will regarding the land situated at village Deogarh are also wrong, illegal, null and void and have no effect on the rights of the plaintiff and the sale deed bearing No.1931 dated 20.1.1994 executed by Anandpal Singh defendant No.1 in favour of defendant No.5 from (sic of) more than his share is also wrong and illegal and has no effect on the rights of the plaintiff and the plaintiff is entitled to get the joint possession of the suit land to the extent of 1/4 share situated in the area of village Dugal Kalan and 1/6 share situated in the area of village Deogarh. The defendants are restrained from alienating the suit land to the extent of the above said share of the plaintiff forcibly and illegally except in due course of law.”

The property owned by Joginder Singh situated at village Dugal kalan was held to be joint Hindu family coparcenary property as per the evidence on record and the admission of defendants-respondents. The property purchased by Joginder Singh at village Deogarh was also held to be

ancestral coparcenary property qua his sons with the observations that it was purchased from the funds arranged by selling the joint Hindu family coparcenary property situated at village Dugal Kalan. This observation was based on the fact that vide sale deed dated 09.07.1975 Ex.PW1/C, Joginder Singh had sold 39 kanals 9 marlas land of village Dugal Kalan for ₹34,520 and purchased the land at village Deogarh vide sale deed dated 23.07.1975 for a consideration of ₹38,000. Will dated 24.04.1990 executed by Joginder Singh was held valid only qua his $1/3^{\text{rd}}$ share which he would have got in notional partition of the suit property situated at village Dugal Kalan and Deogarh. It was held that Anandpal Singh became owner of $5/6^{\text{th}}$ share of the land situated in village Deogarh. The share of Anandpal Singh in the land situated at village Deogarh was calculated as follows:-

- (i) He inherited $1/3^{\text{rd}}$ share being a coparcener.
- (ii) He inherited another $1/3^{\text{rd}}$ share which was owned by Joginder Singh as per his Will dated 24.04.1990.
- (iii) $1/3^{\text{rd}}$ share of Harinderpal Singh, after his death, was inherited by appellant and her mother-in-law Balabir Kaur i.e. $1/6^{\text{th}}$ share each.
- (iv) $1/6^{\text{th}}$ share of Balbir Kaur had gone to Anandpal Singh under her registered Will.

The sale deed executed by Anandpal Singh in favour of respondent-defendant Sandeep Singh was held as illegal, null and void to the extent of share of appellant-plaintiff in the land situated at village Deogarh.

Not satisfied, Anandpal Singh, defendant No.1 and appellant Samarvir Kaur filed appeals against the judgment and decree passed by Civil Judge (Junior Division), Samana. Learned Additional District Judge (Fast Track Court), Patiala vide judgment dated 04.09.2009 dismissed the appeal filed by Samarvir Kaur and the appeal filed by Anandpal Singh was partly

accepted and the judgment and decree of the lower Court was modified to the extent that share of appellant-plaintiff in the land left by Joginder Singh at village Dugal Kalan was held to be $\frac{1}{5}^{\text{th}}$ under Will dated 24.04.1990. The first Appellate Court reversed the finding of the Court below that the land situated at village Dugal Kalan was joint Hindu family coparcenary property in the hands of Joginder Singh. It was held to be self-acquired property of Joginder Singh. The observations to this effect are contained in para 16 and 17 of the judgment which read as follows:-

“16. Ex.PW1/B are copies of mutation no.532, 597 etc. whereby the land situated at village Dugal Kalan out of the suit property was mutated in the name of Joginder Singh and his brothers, which was partitioned amongst them later on. Vide mutation no.532 dated 1.12.1950 Ajmer Singh father of Joginder Singh transferred $\frac{3}{4}$ share of the land owned by him situated at village Dugal Kalan (suit property) in favour of his sons Joginder Singh and Pavitar Singh, in equal shares. He retained remaining $\frac{1}{4}$ share of said land with him. So, it is evident that Ajmer Singh father of Joginder Singh transferred this land in favour of his sons Joginder Singh and Pavitar Singh, during his life time. Further mutation No.597 of inheritance of said Ajmer Singh was sanctioned on 18.3.1956, whereby his remaining land to the extent of $\frac{1}{4}$ situated at village Dugal Kalan was inherited by his sons Joginder Singh, Pavitar Singh and Harcharan Singh, in equal shares by way of survivorship on his death. Vide subsequent mutation no.598 this land was later on partitioned amongst these above said sons of Ajmer Singh. So, it is evident that during his life time Ajmer Singh gave $\frac{3}{4}$ share of his land situated at village Dugal Kalan to his sons Joginder Singh and Pavitar Singh and remaining $\frac{1}{4}$ share in the said land situated at village

Dugal Kalan was inherited by these two sons as well as another son Harcharan Singh, on his death. So, the land (3/8 share) which became ownership of Joginder Singh vide mutation no.532 did not devolve upon him U/s 6 of Hindu Succession Act. Rather it was given to him by his father during his life time. So, it can be considered as a gift and hence it was self acquired property of Joginder Singh. However 1/12 share in the remaining land of Ajmer Singh to the extent of ¼ share situate at village Dugal Kalan devolved upon Joginder Singh by way of survivorship U/s 6 of the Hindu Succession Act. This 3/8 share which was given to Joginder Singh by his father and 1/12 share which devolved upon him by way of survivorship cannot be differentiated as no specific Khasras numbers or portions of land were given to Joginder Singh. Rather the land came to him as share out of the total land. So, his this self acquired non ancestral land i.e. 3/8 share and ancestral coparcenary land i.e. 1/12 share fell to the share of Joginder Singh is intermixed in such a manner that it cannot be differentiated. Moreover, no evidence was led by the parties to prove that this self acquired non ancestral land and ancestral coparcenary land in the hands of Joginder Singh can be differentiated. However, the learned Trial Court observed “it is well settled proposition of law that if self acquired property throws in pool of Joint Hindu Family coparcenary property in such a manner that self acquired property cannot be differentiated from Joint Hindu Family ancestral property, then self acquired property will become Joint Hindu Family ancestral coparcenary property.” The learned Trial Court held that entire land situate at village Dugal Kalan in the hands of Joginder Singh was Joint Hindu Family coparcenary property qua his sons. But in my view these observations of the learned Trial Court are not correct because in case **Mara**

Vs. Mst. Niko @ Punjab Kaur -AIR 1964 SC 1821 it was held that where lands are so mixed up that the ancestral and non ancestral portion cannot be separated, they must be regarded as non-ancestral, unless it is shown that which are ancestral and which are non ancestral. Further in case **Inder Singh (dead through LR.) Vs. Channo & others -2005(1) Civil Court Cases 138** it was held by our Hon'ble High Court that where ancestral and non ancestral land are mixed in such a way that it is difficult to find out as to which part of land is ancestral or non ancestral, thus the entire land is non ancestral.

17. Furthermore as already stated hereinabove, according to the plaintiff as well as the defendants suit land situate at village Dugal Kalan was ancestral coparcenery property in the hands of Joginder Singh. But this admission is of no avail, because the plaintiff was required to prove that land in the hands of Joginder Singh was ancestral coparcenery property, as it was so held in case **Gurjant Singh Vs Surjit Kaur -AIR 2004 PB 251** that admission as to ancestral nature of property contrary to documentary evidence cannot be accepted and documentary evidence will prevail. Hence, I have no hesitation to hold that the entire land situated at village Dugal Kalan recorded in the name of Joginder Singh was his self-acquired property and findings of the learned Trial Court on issue no.1 are not correct and hence, the same are reversed.”

The Appellate Court below held Will dated 24.04.1990 Ex.D1 executed by Joginder Singh to be genuine and beyond any suspicious circumstances. The sale of 2 kanals 18 marlas land made by Anandpal Singh at village Deogarh was held to be legal and valid, holding this land as self-acquired property of Joginder Singh which had fallen to the share of

Anandpal Singh under the Will dated 24.04.1990.

I have heard learned counsel for the parties and perused the paper book and record of the Courts below with their assistance.

Joginder Singh owned land at villages Dugal Kalan, Deogarh and Rewar. The appellant inherited $1/5^{\text{th}}$ share in the land at village Rewar, however, the land situated at village Rewar is not the subject matter of this suit or inheritance of this land has any relevance or bearing with regard to inheritance of land situated at village Dugal Kalan or Deogarh.

This fact is not disputed that Ajmer Singh, father of Joginder Singh, out of his land in village Dugal Kalan gave $3/4^{\text{th}}$ share to his sons Joginder Singh and Pavitar Singh in equal shares. Ajmer Singh retained $1/4^{\text{th}}$ share of his land with him which further devolved on his three sons namely Joginder Singh, Pavitar Singh and Harcharan Singh in equal shares. In this manner, $3/8^{\text{th}}$ share given by Ajmer Singh to Joginder Singh was his self-acquired property and remaining $1/12^{\text{th}}$ share which was inherited by him through survivorship. Learned Civil Judge observed that on intermingling of ancestral property and self-acquired property, the entire land in the hands of Joginder Singh at village Dugal Kalan is to be termed as joint Hindu family coparcenary property. The first Appellate Court did not agree with the above observation and relying on the observation in case of *Mara and others Vs. Mst. Nikko @ Punjab Kaur and another AIR 1964 Supreme Court 1821* observed that where the lands are so mixed up that the ancestral and non-ancestral portion cannot be separated, they must be regarded as non-ancestral unless it is shown that which are ancestral and which are non-ancestral. In case of *Mara and others Vs. Mst. Nikko @ Punjab Kaur and another (supra)*, the Apex Court in para 7 has observed as follows:-

“Now, it has been ruled in the Punjab consistently that where lands are so mixed up that the ancestral and non-ancestral, portions cannot be separated they must be regarded as non-ancestral, unless it is shown which are ancestral and which are not. This was laid down by the Privy Council in *Avtar Singh v. Thakar Singh*, 35 Ind. App. 206 (PC). It was held by Mr. Justice Kapur (as he then was) in *Indar Singh v. Gulzara Singh AIR 1951 Punjab 345* basing himself upon *Saif-ul-Rahman v. Mohammand Ali Khan, ILR 9 Lahore 95* and *Jagtar Singh v. Raghbir Singh ILR 13 Lahore 165* that land ceases to be ancestral if it comes into the hands of an owner otherwise than by descent.”

Relying on the observations in case of *Labh Singh and another Vs.Mt. Jasso and another AIR 1938 Lahore 180*, a Bench of this Court in case of *Inder Singh (Dead) through LRs Vs. Chhano and others 2004(3) RCR (Civil) 803*, had observed as follows:-

“In other words, it can well be said that ancestral and non-ancestral part of land has been mixed up in such a way that it was difficult to find out as to which part of land is ancestral or non-ancestral. In the facts and circumstances, as referred to above, it is to be held that the entire land is non-ancestral. Reference in this connection may be made to Division Bench judgment in *Labh Singh and another Vs.Mst. Jasso and another (supra)*.”

Before proceeding further, it will be relevant to look into the concept of blending of ‘self acquired property’ with ‘ancestral property’. Where a member of a joint Hindu family blends his self-acquired property with property of the joint family, either by bringing his self-acquired property into a joint family account, or by bringing joint family property into his separate account, the effect is that all the property so blended

becomes a joint family property. The above doctrine of blending postulates that the owner of the separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property.

In this case, it is proved that Joginder Singh had 1/12 share in the suit land situated in village Dugal Kalan which he inherited from his father by survivorship. At the time he inherited 1/12th share in the land owned by his father he did not own any other ancestral property. 3/8 share of land given to Joginder Singh by his father during his life time, was his self-acquired property. This shows that by the time Joginder Singh inherited 1/12 share in the land owned by his father, he was neither a coparcener nor had interest in any coparcenary property, as such, the principle of blending is not attracted to the instant case. There is no pleading that Joginder Singh had blended his self-acquired property with his ancestral property at any point of time. In the absence of any such pleadings, this argument is not available to the appellant-plaintiff that meagre share of land inherited by Joginder Singh by way of survivorship from his father on getting mixed up with his major share of land i.e. 3/8th share makes the entire property as ancestral property. Hon'ble Supreme Court discussed and elaborated 'the rule of blending' in case of *Mallesappa Bandeppa Desai and Others Vs. Desai Mallappa and Others AIR 1961 Supreme Court 1268* as follows:-

“The rule of blending postulates that a coparcener who is interested in the coparcenary property and who owns separate property of his own may, **by deliberate and intentional conduct** treat his separate property as forming part of the coparcenary property. If it appears that property which is separately acquired has been deliberately and voluntarily thrown by the owner into the joint stock with

the clear intention of abandoning his claim on the said property and with the object of assimilating it to the joint family property, then the said property becomes a part of the joint family estate ; in other words, the separate property of a coparcener loses its separate character by reason of the owner's conduct and get thrown into the common stock of which it becomes a part. This doctrine, therefore, inevitably postulates that the owner of the separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. There can be no doubt that the conduct on which a plea of blending is based must clearly and unequivocally show the intention of the owner of the separate property to convert his property into an item of joint family property. A mere intention to benefit the members of the family by allowing them the use of the income coming from the said property may not necessarily be enough to justify an inference of blending; but the basis of the doctrine is the existence of coparcenary and coparcenary property as well as the existence of the separate property of a coparcener.”

In case of *Lakkireddi Chinna Venkata Reddi and other Vs.*

Lakkireddi Lakshmama AIR 1963 Supreme Court 1601, it was observed as follows:-

“Law relating to blending of separate property with joint family property is well settled. Property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed

to use the property jointly with himself, or that the income of the separate property was utilised out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation.”

In case of *Goli Eswariah Vs. Commissioner Of Gift Tax, Andhra Pradesh AIR 1970 Supreme Court 1722*, the Apex Court has observed as follows:-

“To pronounce on the question of law presented for our decision, we must first examine what is the true scope of the doctrine of throwing into the 'common stock' or 'common hotchpotch'. It must be remembered that a Hindu family is not a creature of a contract. As observed by this Court in *Mallesappa Bandeppa Desai and Ors. v. Desai Mallappa (AIR 1961 SC 1268)* that the doctrine of throwing into common stock inevitably postulates that the owner of a separate property is a coparcener, who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. **The existence of a coparcenary is absolutely necessary before a coparcener can throw into the common stock 'his self acquired properties.** The separate property of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by him into the common stock with the intention of abandoning his separate claim therein. The separate property of a Hindu ceases to be a separate property and acquires the characteristic of a joint family or ancestral property not by any physical mixing with his joint family or 'his ancestral property but by his, own volition and

intention by his waiving and surrendering his separate rights in it as separate property.”

In this case, there is no evidence that Joginder Singh at any point of time either consented or had thrown his own property in the common pool or blended it with the ancestral property. The mere fact that there is admission of respondents-defendants about the nature of property as ancestral is of no avail. This fact is required to be proved by way of documentary evidence on record and in this case, no documentary evidence is available on record to reach the conclusion. The attempt on the part of the defendant No.1 that the suit property was ancestral property may be a ploy on their part to reduce the share of appellant in the suit property, as discussed in para below, and to deprive her of the better share she may get under the Will of Joginder Singh.

Let it be examined as to what is the impact on the share of the appellant-plaintiff in the event of the land of village Dugal Kalan being held to be ancestral. Learned Civil Judge has rightly calculated that the appellant as legal heir of Harinderpal Singh was left with only 1/6th share in the property, if the inheritance take place holding the property owned by Joginder Singh as joint Hindu family coparcenary property.

In para 14 of trial Court judgment, share of appellant in the land of Joginder Singh at village Deogarh, was rightly calculated as follows:-

“14. So far as the joint Hindu coparcenary property situated at village Deogarh is concerned, Joginder Singh had 1/3 share in it as per notional partition at the time of his death, Anandpal Singh defendant No.1 had 1/3 share and 1/3 share of Harinderpal Singh was inherited by his wife plaintiff Samarveer Kaur and his mother Balbir Kaur in equal shares on the death of Harinderpal Singh.

Joginder Singh could have executed will regarding his 1/3 share only for the land situated at village Deogarh as per Section 30 of Hindu Succession Act and as per the will dated 24.4.1990 executed by Joginder Singh in favour of Anandpal Singh only 1/3 share of Joginder Singh devolved upon Anandpal Singh vide above referred will. Thus, plaintiff Samarveer Kaur is owner to the extent of 1/6 share in the land situated at village Deogarh as he(sic she) inherited the said share from her deceased husband Harinderpal Singh on his death. Anandpal Singh defendant No.1 became owner to the extent of 5/6 share in the land situated at Deogarh, as he was owner to the extent of 1/3 share by way of his coparcenary right and 1/3 share by way of inheritance from his father Joginder Singh vide will dated 24.4.1990 and 1/6 share by way of inheritance from Balbir Kaur vide will dated 2.6.97 executed by her in his favour.”

It has been argued that Joginder Singh had sold more than his share of land during his life time, as such, he was left with no share in the ancestral/coparcenary land at village Dugal Kalan at the time of his death. The above argument is erroneous and is not in accordance with the provisions of law. In the event of property owned by Joginder Singh at village Dugal Kalan being considered as ancestral property, in that event any sale, during his life time, made by Joginder Singh was in his capacity as ‘Karta’ of the family. No such sale was challenged by any of his legal heirs during the life time of Joginder Singh or afterwards, as such, was a sale of ancestral property made by ‘Karta’ for the common cause and benefit of the joint family. The land sold by Joginder Singh cannot be deducted towards his share in the land at the time of his death. In the facts and circumstances of the present case, if this proposition is allowed, the argument of the

appellant that the land purchased in village Deogarh by Joginder Singh after the sale of land of village Dugal Kalan was also ancestral and coparcenary property in the hands of Joginder Singh, will fail. If Joginder Singh had purchased the land of village Deogarh after selling the land of 'his share' in the joint Hindu family property', in that eventuality, this argument is not available to the appellant that any land purchased from the sale consideration of such land is to be considered as ancestral property and will fall in joint pool.

The resultant effect of the above discussion is that the share of appellant in the land of village Dugal Kalan will stand reduced to $1/6^{\text{th}}$ instead of $1/5^{\text{th}}$ which she has inherited under the Will of Joginder Singh and the consequent effect of it is that she will be a loser instead of gainer if her plea that land in the hands of Joginder Singh of village Dugal Kalan was his ancestral property, is accepted. The only addition will be that she may get $1/6^{\text{th}}$ share in the land owned by Joginder Singh at village Deogarh, if her plea that the land at Deogarh was also joint Hindu family coparcenary property, is accepted.

Now, reverting to the observation that the land owned by Joginder Singh at village Dugal Kalan and Deogarh was not his joint Hindu family ancestral/coparcenary property and it was his self-acquired property. Joginder Singh had executed a Will dated 24.04.1990. Learned Civil Judge did not find any fault with the execution of the Will or recorded any finding that this Will was not proved to have been executed by Joginder Singh. However, the devolution of the property of Joginder Singh on the basis of Will was ignored with the observation that Joginder Singh was not competent to alienate the share which would have fallen on his sons by way of notional

partition of ancestral land at the time of his death. He was, however, found competent to execute Will qua his share in the land owned by him as per the provisions of Section 30 of Hindu Succession Act, 1956. He was held to be left with no share in the land situated at village Dugal Kalan with the observation that he had already sold more than his 1/3rd share out of land situated at village Dugal Kalan during his life time.

The first Appellate Court on appraisal of the evidence produced to prove the execution of the Will has rightly held that the Will stands duly proved and the appellant-plaintiff had failed to show any suspicious circumstance surrounding Will dated 24.04.1990.

So far as the Will executed by Balbir Kaur in favour of Anandpal Singh is concerned, the same has not been assailed before the Courts below. It appears that the appellant was not serious in challenging that Will and that is why no issue was pressed with regard to her Will and no evidence was produced in this regard.

Learned counsel for respondent No.1 has raised an argument about the maintainability of this appeal with the plea that against the judgment and decree passed by Court of Civil Judge, two separate appeals were filed. One by the present appellant and the other by defendant No.1. Both the appeals were against one judgment passed in civil suit No.248 dated 24.08.1999. The plaintiff as well as defendant No.1 both were not satisfied with the judgment, as such came out with separate appeals, which were disposed of by the Appellate Court below by a common judgment. Learned counsel for the respondents has argued that there were two separate appeals against one judgment of the Civil Court, as such, one appeal against the disposal of two appeals is not maintainable.

The above argument of learned counsel for the respondents has no merit. There was one civil suit and the parties have filed separate appeals against the judgment and decree passed in that suit. There was no counter claim, as such, one regular second appeal against the disposal of two appeals arising out of one judgment in the civil suit is maintainable.

As a sequel of my above discussion, no substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

March 18, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether refer to Reporters?

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✓
Yes/No.