

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: December 8, 2015

1. R.S.A.No.4827 of 2010 (O&M)

Jorawar Singh @ Jawahar Singh

...Appellant

Versus

Navjot Singh & others

...Respondents

2. R.S.A.No.4793 of 2010 (O&M)

Jorawar Singh @ Jawahar Singh

...Appellant

Versus

Navjot Singh & others

...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.K.S.Dadwal, Advocate,
for the appellant in both the appeals.

Mr.N.S.Swaich, Advocate,
for the respondents (in both appeals).

AMIT RAWAL, J.(Oral)

By this order, I intend to dispose of two Regular Second Appeal Nos.4827 of 2010 and 4793 of 2010 as the common questions of law and facts involved in both the appeals are the same.

Appellant-defendant No.2 is in Regular Second Appeal against the concurrent findings of fact and law, whereby the suit filed by the respondent-plaintiffs claiming declaration that they are owners in joint

possession qua their share in the land measuring 5 kanals 4 marlas and the judgment and decree dated 14.8.1991 passed in Civil Suit No.207 dated 5.6.1991 was not on account of legal necessity as the property at the hands of Pritam Singh was ancestral, has been decreed.

Mr.K.S.Dadwal, learned counsel appearing on behalf of appellant-defendant No.2 in both the appeals has brought to the notice of this Court the notice of motion order dated 31.1.2011 passed in RSA No.4793 of 2010, whereby two-fold contentions have been noticed, which reads thus:-

“Learned counsel for the appellant, inter-alia, contends that the suit filed on 11.9.1997 to challenge decree dated 14.8.1991 is barred by limitation. It was pointed out that plaintiff no.4 Jasvir Singh while appearing in the witness box admitted that they came to know of the said decree about 1½/2 years after the passing of the consent decree and even if limitation period of three years is counted from date of knowledge, even then suit is barred by limitation. It is also contended that consent decree suffered by Pritam Singh father of plaintiff no.4 and defendants and grand-father of plaintiffs no.1 to 3 has been set aside in toto although the same would remain binding qua own share of Pritam Singh.

Notice of motion for 26.4.2011.

Records of the courts below be requisitioned”

So far as first contention noticed in the order dated 31.1.2011 is concerned, I am not in agreement for the reason that once it has been proved in the suit that the property at the hands of Pritam Singh had been ancestral, therefore, the plaintiffs had a right by birth in the property, in essence, they were also co-sharers and, therefore, there is no limitation for claiming declaration vis-a-vis title. Accordingly, the suit cannot be said to be barred by law of limitation and, therefore, the contention with regard to the suit

being barred is hereby rejected.

However, since Pritam Singh along with his sons was holding a property as coparcenary, the decree dated 14.8.1991 vis-a-vis the entire land measuring 5 kanals 4 marlas was not proved for legal necessity, therefore, the same was liable to be set-aside and rightly so, but vis-a-vis his share, i.e., 1/5th, he was well within his right to transfer the property by way of family transfer or otherwise and, therefore, the decree dated 14.8.1991 would be treated only vis-a-vis his 1/5th share in favour of appellant Jorawar Singh-defendant No.2 out of the total land measuring 5 kanals 4 marlas and not qua entire land, thus, the following substantial question of law arises for determination by this Court:-

“Whether the consent decree by Pritam Singh, father of plaintiff No.4 and defendants and grandfather of plaintiff Nos.1 to 3 can be set-aside in toto and would remain binding qua all share of Pritam Singh or not?”

Thus, the substantial question of law, to this extent, is answered in favour of the appellant-defendant No.2 and the judgments and decrees of both the Courts below are modified and it is held that appellant-defendant No.2 would be entitled to share of Pritam Singh as per judgment and decree dated 14.8.1991.

With the aforesaid modification, the appeals are, thus, partly allowed.

December 8, 2015
ramesh

(AMIT RAWAL)
JUDGE