

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**RSA No. 3888 of 2012 and
C.M. No. 10478-C of 2012**

Date of decision: 24.09.2015

Jagjit Singh and others

...APPELLANTS

VS.

Gurdev Kaur and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.K.Shukla, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J.

Through this Regular Second Appeal challenge has been posed to the judgment and decree passed by the Civil Judge (Junior Division), Fatehgarh Sahib dated 12.01.2011, whereby the suit of the appellants-plaintiffs for declaration that revenue entries with regard to the ownership and possession of the share of the appellants-plaintiffs including the share of the deceased Natha Singh with regard to the suit land, as detailed in the head note of the plaint, are liable to be corrected and Mutation No. 5814 and 3107 sanctioned in the name of defendant No. 1 and defendants No. 3 to 7 and plaintiffs No. 1 to 3 are illegal, null, void and inoperative and a suit for permanent injunction restraining the respondents from dispossessing the plaintiffs from the suit land illegally, stands dismissed and the appeal challenging this judgment and decree also stands dismissed by the

Additional District Judge, Fatehgarh Sahib on 25.01.2012.

2. It is the contention of the learned counsel for the appellants that a decree dated 27.02.1986 was passed in Civil Suit No. 27 of 1984 titled as Amarjit Singh vs. Natha Singh and others declaring Amarjit Singh as co-sharer along with the appellants-plaintiffs No. 1 to 3 and their father Natha Singh and entitled to possession of the suit property jointly with them i.e. 1/5th share each. The suit property was also declared to be ancestral and coparcenary. Mutation No. 3814, 3107 and Fard Badar prepared by the revenue authorities in the name of the appellants-plaintiffs and the respondents-defendants being not in accordance with the said judgment and decree cannot sustain and deserves to be set aside. He submits that the Courts below have not properly appreciated the pleadings and the evidence led by the parties and thus, the suit has been wrongly dismissed.

3. I have considered the submissions made by the learned counsel for the appellants and have gone through the impugned judgments passed by the Courts below but am unable to accept the same.

4. The relationship between the parties is not in dispute and the Courts below have rightly considered the effect of the judgment and the law of succession. The judgment and decree dated 27.02.1986 declared the suit property to be coparcenary and Amarjit Singh was declared to be coparcener and it was also held that he becomes a co-sharer with the appellants-plaintiffs No. 1 to 3 and their father Natha Singh. The dispute in the said case was with regard to the factum as to whether Amarjit Singh was the son of Natha Singh. As per the said judgment, Natha Singh was married to Gurdev Kaur, from whom Manjit Singh (who died), Amarjit Singh and Gurupdes Kaur were born. On the death of the brother of Natha Singh, he

brought the wife of his brother Surjit Kaur to his house. The dispute was raised by Amarjit Singh regarding joint possession of the suit land as son of Natha Singh where the finding, referred to above, with regard to the property being coparcenary and he being a co-sharer was returned. It would not be out of way to mention here that the judgment and decree dated 27.02.1986 did not define the share of the co-sharers.

5. It is not in dispute that Natha Singh died on 23.08.1997 and on his death, the property has been mutated in favour of the plaintiffs and the defendants, which mutations are impugned.

6. The learned trial Court has very succinctly dealt with the aspect of the devolving of property as per the application of Section 6 Explanation 1 of the Hindu Succession Act with reference to the dispute in hand in paras 20 and 21, which read as follows:-

20. Before proceeding further, it would be pertinent to mention briefly the law of devolution of coparcenary property as per the mandate of Section 6 Explanation 1 of Hindu Succession Act. As per Section 6 of the said Act, on the death of the coparcener, the property is to devolve upon the surviving coparceners by way of survivorship. However, if the coparcener has died leaving behind a female in his class I legal heirs or a male claiming through a female in Class I legal heir then the principle of Notional partition is to be applied which is a principle of presumption that immediately before his death the coparcener had asked for partition. The shares are accordingly computed. The share of the deceased coparceners which is so calculated on national partition then devolves upon his heirs as

per Section 8 of Hindu Succession Act.

21. Now coming to the present case. In the light of the principle as mentioned above, it is first necessary to enlist the entire progeny of Natha Singh. He had four sons namely Amarjit Singh, Jagjit Singh, Dharam Singh, Himmat Singh. Daughters Gurupdes Kaur, Raj Kaur, Jagjit Kaur, Satpal Kaur and Mohinder Kaur and widow Gurdev Kaur. Now on the death of Natha Singh on 23.8.1997 by applying the principle of Notional Partition Natha Singh's share came to $\frac{1}{6}$ i.e when the partition took place between the sons and father then one share is to be given to the mother. Accordingly Natha Singh, his 4 sons and his wife makes six shares which makes share of Natha Singh to be $\frac{1}{6}$ share. At the same time, all the four sons of Natha Singh, his widow also have $\frac{1}{6}$ share each. This $\frac{1}{6}$ share of Natha Singh is now to be distributed as per Section 8 of Hindu Succession Act equally amongst his class I heirs. In the present case, his class-1 heirs are his five daughters, four sons and widow. Therefore, $\frac{1}{6}$ share of Natha Singh was to be further distributed amongst 10 shareholders i.e $\frac{1}{6} \times \frac{1}{10}$ which makes the share of each of his class one heirs to be $\frac{1}{60}$. His four sons and widow will get $\frac{1}{6} + \frac{1}{60}$ each ($\frac{11}{60}$) i.e each of his four sons would get $\frac{11}{60}$ share each and widow will also get $\frac{11}{60}$ share. However as regard and his daughters all of them would get $\frac{1}{60}$ each individually and jointly $\frac{5}{60}$. The mutation no. 5814 and 3107 reflect this position as per the principle of Hindu Succession Act and hence does not call for

any interference by this Court. The case laws as relied upon by the learned counsel for the plaintiffs do not apply to the present case. Further the interpretation of Section 6 of Hindu Succession Act is as per the law laid down by Hon'ble Supreme Court of India in **Raj Rani vs The Chief Settlement Commissioner Delhi and others reported as AIR 1984 Supreme Court 1234.** (Supra).

The said findings have been upheld by the learned Additional District Judge, Fatehgarh Sahib vide judgment dated 25.01.2012.

7. A perusal of the above leaves no manner of doubt that the Courts below have rightly appreciated the legal position, the pleadings and the evidence, which has been brought on record which cannot be faulted with.

8. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the evidence produced by the parties, thus, there is no illegality in the impugned judgments. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

9. In view of the above, finding no merit in the present appeal, the same stands dismissed.

C.M. No. 10478-C of 2012

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

September 24, 2015

**(AUGUSTINE GEORGE MASIH)
JUDGE**