

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

Regular Second Appeal No.4793 of 2012 (O&M)

Date of decision: 12.5.2015

Hardial Singh @ Gurdial Singh

... Appellant

Versus

Joginder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.J.S.Ghuman, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This appeal was filed on 8th November, 2012 and came up for hearing, for the first time, on 15th November, 2012 when the learned counsel made a request for an adjournment and the matter was posted to 10th December, 2012. It has since then remained pending preliminary hearing. The appeal was filed with an application under Section 5 of Limitation Act, 1963 for condoning the delay of 137 days in filing the appeal. In the application, it is pleaded that the appellant is a poor person and his financial inability kept him from approaching the Court in time. He is an illiterate farmer who earned his livelihood by doing labour work.

2. The appellant is the plaintiff in the suit. He filed a suit for declaration claiming that the suit property is ancestral joint Hindu co-

parcenary family property purchased in lieu of land sold by his father Lal Singh son of Gulab Singh. Parties are sons of Lal Singh and it was claimed that all constituted a joint Hindu family property. It was pleaded that Lal Singh settled the properties within the family by a settlement dated 17th May, 2003. On the death of Lal Singh, five sons of Lal Singh, one of whom is the plaintiff entered possession of land measuring 3 Bighas 16 Biswas divided in 5 shares for his 5 sons and one for himself each comprising 1 bigha 4 biswas 5 biswasies of land. They claimed that they are owners in exclusive possession of their respective shares which were not open to be disturbed by the defendants who had needlessly begun to cloud their rights and try to disturb them which had compelled the plaintiff to institute the suit claiming exclusive possession under the settlement. The alleged family settlement is an unregistered document and the same is not admissible in evidence since the family settlement works like a memorandum of partition as held by the learned trial Court read when he read the settlement and thought that the same to be worded as a partition deed but not a memorandum of settlement seeking to declare and distribute the different interests in possession of immovable property.

3. The defendant contested the suit and *inter alia* urged that the plaintiff in the suit sought declaration with respect to specific khasra numbers and since the land had not been partitioned by decree, specific khasra numbers could not be allotted to the respective shares, the *khata* being joint. The Court arrived at the conclusion that there no partition had taken place with respect to khasra numbers, since khasra numbers were not mentioned therein. The Court found nothing on record to suggest that the

suit property was ancestral joint Hindu family co-parcenary property of the parties litigating. It was the case of the plaintiff that the suit property was purchased by Lal Singh after he sold his land in village Norangwal, District Ludhiana. No documentary evidence was adduced on record that the money obtained from the sale of land in village Norangwal was applied towards purchase of the suit property. There was no evidence linking the two transactions. On these premises, learned Additional Civil Judge [Senior Division], Dhuri concluded that the ancestral nature of the property was not proved and, therefore, it followed that the property was self-acquired property of Lal Singh. Therefore, relief was inadmissible. The suit was dismissed on 6th April, 2009.

4. The appeal preferred before the learned Additional District Judge, Sangrur in May, 2009 failed. The appeal Court re-appreciated the evidence on record. The statements of the witnesses have been dealt with and need no repetition. The appeal court noticed that the mutation of inheritance of the suit land belonging to Lal Singh was sanctioned in favour of his legal heirs and the plaintiff had appealed against the mutation before the Collector through an appeal which was dismissed. It was argued in appeal as before the trial Judge that the family settlement was not a compulsorily registrable document. The appellant relied on the rulings in **Ranganayakamma and another v. K.S.Parkash (D) by LR's and others;** 2008 (3) RCR (Civil) 601 and **Dhian Singh v. Sheela Devi and others;** 2008 (1) RCR (Civil) 792 to support the argument that the family settlement when reduced into writing involving rights to joint family property do not require registration and, therefore, the family settlement had legal effect and

was binding between the parties. Learned lower appellate court distinguished the rulings on the facts of the case by endorsing the view of the trial Judge that the property of Lal Singh was not ancestral joint Hindu family co-parcenary property of the parties and there was nor reason to disturb the findings on the issue. If there was no evidence of the nature of the property being as claimed, then it follows sequitur that the property was self-acquired property of Lal Singh and open to natural succession on his death, if he died intestate. The appeal court took a look at the family settlement dated 17th May, 2003 and discovered that it had been executed by Lal Singh during his life time but the original of the same was not produced and only a xerox copy was produced on record as Ex.P3. He read the family settlement and found no description of the property contained in it. Neither the boundaries nor the khasra numbers were mentioned to connect the settled possession of each of the co-sharers.

5. Prahlad Kumar PW2 appearing as witness of the plaintiff in his cross-examination admitted that document Ex.P3 [family settlement] does not bear the signatures or stamp because the same could only be on the original one which was not produced. Similarly, Lal Singh had two daughters but their names are not mentioned in the document. Neither have they been impleaded as parties to the suit though the Court held that they were necessary parties. The first appeal court vide judgment and decree dated 28th March, 2012 found himself unable to attach weightage to the document dated 17th May, 2003 Ex.P3 and, therefore, the declaration sought could not be granted.

6. When two necessary ingredients for relief by decree in a suit for declaration of ownership and possession of specific land are missing, then no interference is called for in the judgment and decrees of both the Courts below. The property was neither joint Hindu family co-parcenary property nor could the photocopy of the document Ex.P3 be read as evidence in proof of the original. The original was not produced nor was an application filed to adduce the document by way of secondary evidence. At least nothing of the kind is reflected in the appeal paper-book. There is no merit in the appeal and the same is liable to be dismissed. It is ordered accordingly.

7. In view of the dismissal of the main appeal, no orders are required to be passed on the application for condoning the delay in filing the appeal.

8. Appeal dismissed.

(RAJIV NARAIN RAINA)
JUDGE

May 12, 2015

Paritosh Kumar