

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

**RSA No.4066 of 2013 (O&M)  
Date of Decision:11.09.2015**

**Sukhvir Kaur and others**

**....Appellants**

**Vs**

**Balwinder Singh and anr.**

**....Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. D.S. Gurna, Advocate  
for the appellants.

Mr. Dinesh Ghai, Advocate for  
Mr. Swaran Tiwana, Advocate  
for the respondent No.1.

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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?*

**RAJ MOHAN SINGH, J.**

[1]. Defendants are in second appeal against the concurrent judgment and decrees passed by the Courts below. Plaintiff filed a suit for possession by way of specific performance for recovery and permanent injunction.

[2]. Mohinder Singh along with defendant No.5 was owner of the suit land and they entered into agreement to sell dated 12.09.2006 in favour of plaintiff. Agreement to sell was scribed at the instance of Mohinder Singh and defendant No.5. Sale consideration was fixed as Rs.12,50,000/- per acre. An amount of Rs.10,00,000/-

was paid as earnest amount out of which an amount of Rs.8,00,000/- was paid to Mohinder Singh and remaining amount of Rs.2,00,000/- was paid to defendant No.5. It was agreed between the parties that sale deed would be executed on or before 12.09.2007. Property was to be got freed from all encumbrances. Mohinder Singh died on 30.12.2006. Plaintiff always remained ready and willing to perform his part of contract vis-a-vis the legal representatives of Mohinder Singh and defendant No.5. Defendant No.5 honoured the agreement to sell and executed the sale deed in favour of the plaintiff.

[3]. Defendants No.1 to 4, the legal heirs of Mohinder Singh contested the suit on the ground that Mohinder Singh never entered into agreement to sell, nor received the amount. The suit property is claimed to be joint Hindu family coparcenary property of Mohinder Singh and as such he was not having right to sell, however agreement to sell 12.09.2006 has been denied altogether, nor the payment of the amount has been admitted. Agreement to sell has been claimed to be forged and fabricated. After filing replication, the trial Court framed the following issues:-

- “1. Whether plaintiff is entitled to the possession as prayed for? OPP.
2. Whether plaintiff is entitled to permanent injunction as prayed for? OPD
3. Whether suit of plaintiff is not maintainable in the present form? OPD
4. Whether plaintiff has no locus standi and no

*cause of action file the present suit?OPD*

5. *Whether the plaintiff has concealed the true and material facts from the Court? OPD*
6. *Whether this court has no jurisdiction to try and decide the suit?OPD*
7. *Whether the suit is barred under order 2 rule 2 of CPC?OPD*
- 7-A *Whether the suit property is part of the Joint Hindu Family co-parcenary property, if so its effect? OPD*
8. *Relief.”*

[4]. Parties led evidence. Trial Court considered issues No.1 to 3 and 7-A jointly and returned the finding that execution of agreement to sell is fully proved. The nature of property being ancestral has also been proved by the trial Court, but defendants have not taken the plea that agreement to sell executed by Mohinder Singh is not for the benefit, rather they denied the very execution of agreement to sell and also took plea of fraud.

[5]. Trial Court held that since particulars of fraud have not been pleaded and proved, therefore, execution of agreement to sell stands proved and unexecutability of sale deed on the ground that the property being ancestral and coparcenary in nature cannot be sustained. Trial Court also held that once the validity of agreement to sell is established, plea of Mohinder Singh being not competent to enter into agreement to sell has been negated. Trial Court further observed that the plaintiff always remained ready and willing to

perform his part of contract. Part of agreement to sell already stood complied with when defendant No.5 executed sale deed in favour of plaintiff by honouring the agreement to sell.

[6]. After returning findings on the aforesaid issues, trial Court decreed the suit for possession by way of specific performance on the basis of agreement to sell dated 12.09.2006, directing the plaintiff to deposit the balance sale consideration within a period of one month and by directing the defendants No.1 to 4 to execute the sale deed within a period of one month of balance sale consideration deposited by the plaintiff. Suit for permanent injunction has also been decreed to the effect that the defendants were restrained from alienating the suit land except to the plaintiff.

[7]. Having dissatisfied with the judgment and decree passed by the trial Court, the defendants No.1 to 4 filed appeal. Cross-objections were also filed by the plaintiff/deGREE-holder qua the findings recorded under issue No.7-A. Lower appellate Court affirmed the findings recorded by the trial Court on issues No.1 to 3 and 4 to 7. As regards findings recorded by the trial Court under issue No.7-A are concerned, the stand of the defendants No.1 to 4 was that the suit land is partly ancestral and partly self-acquired property on the strength of testimonies of attesting witnesses Sukhwant Singh and Sohan Singh. Whereas the evidence of Sukhwant Singh and Sohan Singh attesting witnesses was to the effect that suit property is ancestral in nature.

[8]. For proving property to be ancestral in nature Paramjit Singh, Kanungo of D.C. Office, Fatehgarh Sahib was examined as DW-2, who brought the excerpts. On the basis of this evidence, defendants No.1 to 4 sought to argue that Mohinder Singh inherited the property from his father Lal Singh and Lal Singh inherited the property from his father Lehna Singh. The suit land agreed to be sold was 43 *Kanals 7 Marlas* out of which share of Mohinder Singh came out to be 37 *Kanals*. Perusal of aforesaid excerpts showed that Mohinder Singh had inherited the property from Lal Singh. Ex.D-4 *Khatoni Pamaish* shows that Lal Singh and Makhan Singh had land measuring 40 *Kanals 4 Marlas*, 18 *Kanals 14 Marlas* and 10 *Kanals 0 Marla*. As per Ex.D-7 (Mutation) half of the share of Lal Singh in land measuring 37 *Kanals 9 Marlas* was succeeded by Jagir Singh, Darshan Singh, Mohinder Singh and Dalip Singh along with their mother Sant Kaur.

[9]. The aforesaid details proved that each of the aforesaid got 1/5<sup>th</sup> share in the property left behind by Lal Singh. Evidence has also been brought on record that 1/8<sup>th</sup> share of Lal Singh is in the form of *Gair Mumkin Land* i.e. 0-11 *Marlas*. If the aforesaid 37 *Kanals 9 Marlas* of land succeeded from Lal Singh is divided into five parts, then it comes out to be 5 *Kanals*. Therefore, Mohinder Singh's entitlement was 5 *Kanals* out of the holdings of Lal Singh. The evidence further shows that 20 *Kanals 17 Marlas* of land was received from Rachpal Singh by way of exchange in favour of Jagir Singh, Darshan Singh, Mohinder Singh, Dalip Singh and Sant Kaur

to the extent of half share. Mutation of exchange, Ex.D-12 from Rachpal Singh was also sanctioned vis-a-vis Jagir Singh, Darshan Singh, Mohinder Singh, Dalip Singh and Sant Kaur. Mutation, Ex.D-13 further shows that  $\frac{1}{6}$ <sup>th</sup> share of Santo was executed by Darshan Singh, Mohinder Singh sons of Lal Singh to the extent of  $\frac{1}{6}$ <sup>th</sup> share in the land measuring 54 *Kanals* 3 *Marlas*. Further mutation Ex.D-19 shows that Jagroop Singh Singh and Jagdeep Singh sons of Rachpal Singh exchanged their  $\frac{1}{4}$ <sup>th</sup> share in 20 *Kanals* 17 *Marlas* with Mohinder Singh to the extent of  $\frac{3}{8}$ <sup>th</sup> share.

[10]. The evidence further shows that Jagjit Singh etc. sold their half share in the land measuring 1 *Kanal* 5 *Marlas* to Mohinder Singh, Ex.C-20 (Mutation). Kahala son of Makhan Singh sold  $\frac{1}{6}$ <sup>th</sup> share in 75 *Kanals* 10 *Marlas* in favour of Mohinder Singh and Darshan Singh. Similarly in view of D-21 Fakir Singh s/o Makhan Singh sold  $\frac{1}{6}$ <sup>th</sup> share out of land 75 *Kanals* 0 *Marla* in favour of Mohinder Singh and Darshan Singh.

[11]. From the aforesaid evidence, it comes out that Mohinder Singh had got land in addition to 5 *Kanals* of land acquired by him from Lal Singh by means of different modes. Now the question arises whether the land acquired by a mode other than inheritance or discendence would be self-acquired property or the ancestral property? If self-acquired property is mixed with ancestral property, then the entire property becomes self-acquired. Lower appellate Court discussed the aforesaid issue and held that self-acquired

property and the ancestral property were so inseparable that the entire property becomes self-acquired property of Mohinder Singh and the property cannot be held to be ancestral property as the major portion of land was acquired by Mohinder Singh through different means. The entire property cannot be termed to be ancestral in any case.

[12]. The stand of the defendants was that Mohinder Singh was not competent to sell the property as it was joint Hindu family property. Since there was no stand taken by the defendants that the alienation made by Mohinder Singh was for legal necessity or benefit of the estate or the family, therefore, the question of ancestral or non-ancestral becomes inconsequential and agreement to sell had to be enforced. In view of aforesaid, Appellate Court returned the finding accordingly, partly in favour of plaintiff and partly in favour of defendants No.1 to 4. The Lower appellate Court dismissed the appeal filed by the defendants No.1 to 4 and the cross-objections filed by the plaintiff have been allowed partly on issue No.7-A to the extent as stated above. In nutshell judgment and decree passed by the trial Court was upheld.

[13]. Still further aggrieved by the judgment and decree passed by the Courts below, defendants No.1 to 4 preferred the present Regular Second Appeal.

[14]. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I,** framing of question

of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clause (a) to (c) of Section 100(i) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim of "*interest reipublicae ut sit finis litium*".

[15]. Following questions of law have been formulated by the appellants:-

- “a) *Whether the evidence on record is not liable to be appreciated in a legal and proper manner and findings recorded contrary to the evidence are not perverse?*
- b) *Whether where documentary evidence disapproves the execution of alleged agreement to sell, can the same be taken as proved on the basis of oral evidence which in itself is full of material contradictions?*
- c) *Whether the equitable relief of specific performance can be granted by directing the legal representatives to execute the sale deed of joint Hindu coparcenary property?*
- d) *Whether agreement which has been rendered*

*shady and doubtful by plaintiff's own documentary evidence can be specifically enforced?*

- e) *Whether the accretions to the joint Hindu coparcenary property emanating from the income of such joint property are not to be treated as joint?*
- f) *Whether the judgments passed by taking an erroneous view as to the burden of proof are not perverse and therefore, liable to be set aside?"*

[16]. I have heard learned counsel for the both the sides.

[17]. Learned counsel for the appellants has contended that coparcenary property/ancestral property could have been subjected to sale only in case of legal necessity. If the vendor against whom suit for specific performance was filed, has died, it cannot be said that the legal representatives in their capacity cannot take defence that the deceased was not competent to alienate the ancestral property and that they can challenge the sale deed only. According to learned counsel, the legal representatives of Mohinder Singh cannot be forced to execute the sale deed first and then to challenge the same on the grounds available to them. Reference has been made to **1998(3) RCR (Civil) 48, Jagjit Singh v. Mithoo Singh.**

[18]. I have considered the submissions made by the learned counsel for the appellants. There cannot be any dispute with regard to plea raised, but on thorough perusal of record it is culled out that the property in its very nature cannot be termed to be ancestral property. Part of the property has been found to be ancestral and it

has also emerged that larger chunk was acquired by Mohinder Singh on account of exchange and other transfers of self-acquired nature. The land is so intrinsically mixed that ancestral nature and non-ancestral nature of the land cannot be segregated. In view of aforesaid, the entire land has to be treated as non-ancestral and aforesaid proposition does not arise.

[19]. Learned counsel also argued that the power of Manager/*Karta* of the joint family had only powers to sell property not only for defensive purposes, but also where circumstances were such that a prudent owner could alienate the land for consideration. Since nothing has been suggested in the written statement that property subjected to agreement to sell by Mohinder Singh was not for the benefit of the family or the estate of Mohinder Singh, therefore, plea in negative cannot be entertained at the instance of defendants No.1 to 4. There is no material on record to show that the transaction which was being contemplated at the instance of Mohinder Singh was not an act of prudent nature and was in any case injurious to the interest of the family.

[20]. In each case, Court has to satisfy from material before it. For a transaction to be regarded as of benefit to the family, it needs to be of defensive character so as to be binding on the family. The Court must be satisfied from the material before it that it was such as conferred or was reasonably expected to confer benefit on the family at the time it was entered into. In view of facts on record, the

agreement to sell cannot be treated to be an effort to cause damage to the property, rather in the absence of any material on record it would be treated to be an act of good management.

[21]. Learned counsel further highlighted that when the coparcener agreed to sell coparcenary property, contract cannot be specifically enforced. In support of his contention he relied upon **1982 PLR 105, Devi Dayal v. Manohar Lal**. The aforesaid submission if considered in the light of material on record, has no meaningful basis. For invoking such proposition, nature of property being ancestral or coparcenary has to be established. As discussed earlier, there is no material on record to conclude that the property in question can be exclusively termed as coparcenary or ancestral in nature.

[22]. At last, learned counsel highlighted the plea of fraud and misrepresentation. Surprisingly plea of fraud is not based upon any material on record. Fraud has not been pleaded with material particulars, nor proved by any cogent evidence. In the light of aforesaid, plea of fraud cannot be taken notice of by this Court.

[23]. Questions No.a and b are only academic in issue and are based on the findings of fact recorded by the Courts below. Question No.c is based on evidence. Agreement to sell has been proved with reference to evidence of scribe and attesting witnesses. The stand taken by the defendants No.1 to 4 is of total denial. They also pleaded that property in question is ancestral property and,

therefore, the same cannot be subjected to agreement to sell by Mohinder Singh. The stand taken by the defendants is contradictory in nature. Once execution of agreement to sell is proved on record, normal consequence is to decree the suit for specific performance. Even if the property is proved to be Hindu joint coparcenary property. In the absence of any plea of transaction being not in benefit of the family or the estate, no restraint can be observed against proposed alienation in the form of agreement to sell. Even otherwise the case of the defendants is not covered under any of the exceptions of Section 20 of Specific Relief Act. In view of aforesaid, the plaintiff is entitled to the relief of specific performance against the legal representatives of Mohinder Singh, even if the part of property is proved to be Hindu coparcenary property and ancestral property.

[24]. It is also a settled principle that if the ancestral and non-ancestral nature of property are inseparable, than the entire property has to be treated as non-ancestral property i.e. self-acquired property of Mohinder Singh. Apparently, Mohinder Singh has acquired big portions of land by means of different modes from other persons, therefore, the property in the hands of Mohinder Singh was a self-acquired property and it did not come to him by way of discendence only.

[25]. Question No.d is also a question of fact based on evidence that has been appreciated by the Courts below. With regard to question No.e, there is no evidence on record that the property in

question which is alleged to be Hindu coparcenary property emanated from any joint property, rather the evidence to the contrary has come on record and proved that Mohinder Singh has acquired property from different persons by means of exchange and others forms of transfer. In view of findings of fact recorded that the property is a self-acquired property of Mohinder Singh and was inseparable in nature from original share of Mohinder Singh to the extent of 5 *Kanals*, the findings under this question cannot be given in affirmative.

[26]. Question No.f cannot be appreciated in the light of findings recorded under different issues to hold that the property in the hands of Mohinder Singh was non-ancestral in nature in the absence of any such plea of agreement to sell being not in benefit of the family and estate of Mohinder Singh. No such appreciation was done by the Courts below, nor the same could be done herein.

[27]. Consequently, in view of aforesaid facts and circumstances, it cannot be held that the defendants can claim protection on the ground of property being ancestral in nature, rather the evidence has come to the contrary to show that property other than original share of 5 *Marlas* has come to Mohinder Singh by means of different transactions which are otherwise than inheritance/discendence, therefore, the original share being inseparable in nature makes the entire holding in the hands of Mohinder Singh to be self-acquired property/non-ancestral property.

[28]. The execution of agreement to sell has been proved on record with reference to evidence. No contrary evidence has been brought on record by the defendants. Plea of fraud taken by the defendants has not been established as material particulars of fraud have not been pleaded and proved in the case.

[29]. Resultantly, findings no merit in the appeal the same is dismissed, leaving the parties to bear their own costs.

September 11, 2015  
*Atik*

**(RAJ MOHAN SINGH)**  
**JUDGE**