

In the High Court of Punjab and Haryana at Chandigarh

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CM No.11167-C and 11168-C of 2013

and

R.S.A. No.4134 of 2013 (O&M)

.....

Date of decision:13.5.2015

Daljeet Kaur

.....Appellant

v.

Jupinder Singh and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sarju Puri, Advocate for the appellant.

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Inderjit Singh, J.

CM No.11167-C of 2013:

For the reasons mentioned in the civil miscellaneous application, the delay of 222 days in re-filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

CM No.11168-C of 2013:

For the reasons mentioned in the civil miscellaneous application, the delay of 12 days in filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

R.S.A. No.4134 of 2013 (O&M):

This regular second appeal has been filed by Daljeet Kaur-

appellant/plaintiff No.3 against Jupinder Singh etc.-respondents/defendants challenging the impugned judgment and decree dated 21.9.2010 passed by the learned Additional Civil Judge (Senior Division), Garshankar, and the judgment and decree dated 14.8.2012 passed by the learned Additional District Judge, Hoshiarpur in the appeal.

The brief facts of the case are that plaintiffs-Karnail Singh, Jarnail Singh (since deceased) and Daljeet Kaur filed suit against Jupinder Singh, Ujjagar Singh, Nasib Kaur and Manjit Kaur-defendants for declaration to the effect that the plaintiffs are co-sharers in joint possession to the extent of 3/9 share in equal shares or in the alternative to the extent of 21/72 share in equal shares of land measuring 48 Kanals 17 Marlas as described in the head note of the plaint and the sale deed dated 28.9.2000 executed by defendant No.2 in favour of defendant No.1 is wrong, incorrect, illegal, unlawful, sham, bogus, without consideration, null and void. It is the case of the plaintiffs that previously Attra along with his sons Dhanpat and Ram Kishan constituted a joint Hindu Family. It is stated that Attra was the 'Karta' of the Joint Hindu Family and was owner of the suit property measuring 168 Kanals 18 Marlas as shown in the Jamabandi for the year 1943-44. After the death of Attra, the land devolved upon the surviving coparceners Dhanpat and Ram Kishan in equal shares and was mutated in their names. Ram Kishan was married to Atti. He was issueless. He died some years before 1949. He left behind his brother Dhanpat as the sole surviving coparcener of the said Hindu Family. Dhanpat, therefore, became owner in possession of the land measuring 168 Kanals 18 Marlas. Dhanpat

had four sons, namely, Chanan Singh, Gurmit Singh, Kesar Singh and Ujjagar Singh and daughter Nasib Kaur. Gurmit Singh died in the year 1956. Kesar Singh died leaving behind Jupinder Singh-defendant No.1. It is the case of the plaintiffs that Ujjagar Singh-defendant No.2 committed the murder of Dhanpat his father on 5.8.1949, therefore, as per Hindu Succession Act, 1956 (hereinafter referred to as 'the Act') he was not entitled to succeed the property of Dhanpat. It is also the case of the plaintiffs that defendant No.2 Ujjagar had executed the sale deed dated 28.9.2000 and transferred the suit land to defendant No.1.

On the other hand, defendant No.2 appeared and filed separate written statement wherein he stated that he has been falsely implicated in criminal case relating to the murder of his father Dhanpat. He denied the other allegations of the plaintiffs. It is stated that the said land was Joint Hindu Family coparcenary property. The answering defendant, along with his brothers got interest in his land from his father Dhanpat and grandfather. Defendant No.1 also filed separate written statement and prayed for dismissal of the suit.

The learned Additional Civil Judge (Senior Division), Garhshankar, vide judgment and decree dated 21.9.2010 dismissed the suit of the plaintiffs. Aggrieved from the judgment and decree, the plaintiffs filed an appeal before the District Judge, Hoshiarpur and the learned Additional District Judge, Hoshiarpur vide judgment and decree dated 14.8.2012 dismissed the appeal. Aggrieved from the judgments and decrees passed by the Courts, this regular second appeal has been filed by appellant-

plaintiff Daljeet Kaur.

At the time of arguments, learned counsel for the appellant mainly argued on one point that Ujjagar Singh has no right to succeed in this case as per the provisions of the Act as the murderer cannot succeed the person, whose murder he had committed and he relied upon Section 25 of the Hindu Succession Act.

I have heard learned counsel for the appellant and have gone through the record.

First of all, the findings given by the Courts below are concurrent. Secondly, Dhanpat as per the case of the plaintiffs was murdered in the year 1949 and the Hindu Succession Act came into force in the year 1956 much after when the inheritance of Dhanpat opened. Section 25 of the Act will not apply. Moreover, main point in this appeal is whether the plaintiffs have been able to prove the fact that Ujjagar Singh-defendant No.2 had committed the murder of his father Dhanpat by leading cogent evidence. It is admitted fact that no judgment of conviction etc. has been placed on record to prove that Ujjagar Singh had committed the murder. No evidence has been produced before the civil Court to prove that Ujjagar Singh had committed the murder by bringing eye witness to the occurrence or any other cogent evidence. The witnesses, which have been brought by the plaintiffs, are not the witnesses to the occurrence. Otherwise also, the murder had taken place in the year 1949 and this suit had been filed in the year 2000 i.e. after 51 years. There is no reason or ground given as to why the suit had not been filed earlier. Otherwise also, as no evidence has been

produced by the plaintiffs to prove the fact that Ujjagar Singh has committed murder of Dhanpat, the suit of the plaintiffs is liable to be dismissed on this ground. In the written statement, it is specific case of defendant No.2 that he was falsely implicated in that case. In no way, it can be held as admission by defendant No.2 that he committed the murder. Mere proving the FIR against Ujjagar Singh will also not prove the case of the plaintiffs that Ujjagar Singh had committed the murder of his father Dhanpat. Therefore, findings of fact have been correctly given.

Learned counsel for the appellant has placed reliance on the judgment of Hon'ble Privy Council in Kenchava Kom Sanyellappa Hosmani and another v. Girimallappa Channappa Somasagar, AIR 1924 Privy Council 209, in which it is held that a murderer must for the purpose of the inheritance, be treated as if he was dead when the inheritance opened and as not being a fresh stock of descent; the exclusion extends to the legal as well as beneficial estate, so that neither he can himself succeed nor can the succession be claimed through him. I have gone through the law laid down in this case, which will not apply having distinguished facts. As already discussed, the plaintiffs have failed to lead evidence on the record to prove that defendant No.2 Ujjagar Singh committed the murder of his father Dhanpat.

Learned counsel for the appellant also placed reliance on the judgment of Hon'ble High Court of Andhra Pradesh in Nannepuneni Seetharamaiah and others v. Nannepuneni Ramakrisnaiah, AIR 1970 Andhra Pradesh 407. I have gone through the law laid down in this case. This case

also having distinguished facts will not apply in the present case in hand as in that case it was held that a person who had participated in the murderous attack on his father along with others who was given benefit of doubt and was convicted under Section 324 IPC instead of Section 302 IPC even then the disqualification prescribed by Sections 25 and 27 of the Act will come into play and operate against that person inheriting or deriving any beneficial interest in the property possessed or held by his father. These are not the facts of the present case as in the present case, the plaintiffs have failed to prove by leading evidence that Ujjagar Singh had committed the murder of his father Dhanpat or had participated in the crime.

Therefore, from the above discussion, I find that the findings given by the Courts below, on the basis of evidence are correct and as per law. The judgments and decrees passed by the Courts below do not require any interference from this Court and the same are upheld. Otherwise also, no substantial question of law arises in this regular second appeal.

Therefore, finding no merit in this regular second appeal, the same is dismissed.

May 13, 2015.

(Inderjit Singh)
Judge

hsp