

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.246 of 2015 (O&M)
Date of Decision: 20.04.2015

Harnek Singh and another

..... Appellants

Versus

Gurdev Kaur through its LR's and another

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K.S. Brar, Advocate,
with Mr. A.P. Kaushal, Advocate,
for the appellants.

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

RAJIV NARAIN RAINA, J.

The plaintiffs are in second appeal. Their suit was dismissed on April 12, 2013 and the appeal was failed on May 28, 2014. The appeal is against concurrent findings of fact. The suit was for declaration to the effect that plaintiffs and defendant No.3 are owner and in possession in equal shares of land with right to half share in land comprised of khasra and khatauni numbers described in plaint situated in village Chhoti Haveli, H.B. No.48, Tehsil and District Ropar. The further prayer was for declaration that parties are owner in Joint possession in equal shares from half share in the land comprised of khasra and khatauni numbers mentioned in the head note to the plaint. The claim is based as per Jamabandi for the year 2002-2003. A further declaration was sought that the suit land was joint Hindu Family Coparcenary and ancestral property of the plaintiffs and defendant No.3.

The other prayer was for declaring a sale deed dated July 19, 2007 executed

by defendant No.1 in favour of defendant No.2 regarding 3 Kanal 18 Marla out of 31 Kanal 4 Marla of land comprised and described in the head note to the plaint situated in village Chhoti Haveli being illegal, null and void and liable to be set aside as one without consideration by seeking relief of permanent injunction restraining defendants No.1 and 2 from selling, alienating, mortgaging and changing the nature of the suit land and for declaration to the defendants not to interfere in the peaceful possession of the share of the plaintiffs in the suit property. The defendant Nos.2 & 3 contested the suit by filing written statement. It was pleaded in defence that the suit property was inherited by Gurdev Kaur from her late husband Ram Parkash and being widow she became absolute owner in possession of the suit property as per provisions of the Hindu Succession Act, 1956. The property was purchased from defendant No.2 Jasbir Singh for consideration and the sale cannot be questioned. The suit property was transferred by Gurdev Kaur vide the impugned sale deed registered on July 19, 2007 for valuable consideration of Rs.3,20,000/-. Other objections were taken as to the suit be not properly valued for the purposes of court fee and jurisdiction. Defendant No.1 Gurdev Kaur died about 10 years ago. No written statement can be filed on her behalf till the LRs of Gurdev Kaur were impleaded including defendant No.3. As the property was inherited by female as of right so the same cannot acquire the status of Joint Hindu Family and Coparcenary Property. The suit property being acquired by defendant No.1 Gurdev Kaur widow of Ram Parkash became absolute owner and to deal with in any manner she liked. She could pass title to defendant No.2 for consideration. A replication was filed to the written statement of defendant

Nos.2 and 3. The parties went to trial on nine issues and led their respective evidences in support of their cases. The plaintiffs relied on Jamabandi for the year 1905-06 Ex.P-1 of which translated version and copy of mutation No.32 is Ex.P-2. These documents are scribed in Urdu. The plaintiffs also produced Jamabandi for the year 1921-22 vide Ex.P-6 and copy of translated version of mutation No.19 is Ex.P-7. Many other Jamabandis were also exhibited up to 1984-85 Ex.P-19. Issues No.1, 2, 3 and 7 were decided jointly. The plaintiffs' right to property obtained from Bansi who is grandfather of the plaintiffs. Ram Parkash father of the plaintiffs inherited the suit property from Bansi, therefore, the suit property was co-parcenary and JHFP in which both the plaintiffs along with defendant No.3 had a birth right.

The learned trial Court held that there was failure to connect the khasra numbers of the land incorporated in Ex.P-1 to Ex.P-14 with the suit property. The trial Court held that:-

"The plaintiffs did not place or proved on record Khatauni Pamaish, Khatauni Istemal and Naksha Hakdarwar which was the foremost requirement to connect the Khasra Numbers of Ex.P1 to Ex.P14 with the suit property. From the entry of Jamabandi for the year 1984-85 Ex.P19 it is made out that the mutation No.557 of the inheritance of Bansi was sanctioned in favour of Harnek Singh, Gurmit Singh, Balbir Singh sons of Ram Parkash and Gurdev Kaur widow of Ram Parkash to the extent of 1/2 share each and in favour of Mohinder Singh son of Bansi to the extent of 1/2 share in the suit land. Thus from the aforesaid entry of mutation it is proved that the defendant No.1 inherited the suit property from Bansi by virtue of Section 14 (1)) of Hindu Succession Act, 1956. Defendant No.1 inherited the aforesaid share in the property of Bansi as absolute owner thereof. Therefore, the plaintiffs have failed to prove that the suit property is ancestral Joint Hindu Family or

Coparcenary property in nature thus the plaintiffs are neither entitled to the relief of declaration nor entitled to the relief of joint possession over the suit property. Accordingly, issue Nos.1 to 3 are decided against the plaintiffs and in favour of the defendants and issue No.7 is decided in favour of the defendants and against the plaintiffs."

The Court held that defendant No.1 is absolute owner of the suit property. Therefore, sale deed Ex.D-1 is proved to have been executed by defendant No.1 in favour of defendant No.2 for a valid consideration and valid title passed. The challenge to the sale deed has been blunted. The learned Additional Civil Judge (Senior Division), Ropar vide judgment and decree dated April 12, 2013 dismissed the suit with costs.

Aggrieved by the dismissal of the suit, the plaintiffs carried appeal to the Additional District Judge (Fast Track Court) Rupnagar in Civil Appeal No.27 of 26.04.2013 which has been dismissed by affirming the findings of the Court below. The Lower Appellate Court has held that the plaintiffs failed to prove that the property was Joint Hindu Family Coparcenary and Ancestral Property or that they have inherited the same being members of Joint Hindu Family. If they failed to do so they are not entitled to relief for declaration and injunction claimed by them.

The only question arises is whether defendant No.1 Gurdev Kaur was absolute owner of the property in dispute and whether she could pass valid title to defendant No.2. The parties are related to each other. In this view, a declaration for joint possession of suit property could not be issued. There was failure on the part of the plaintiffs to collect the property in dispute from their forefathers to them in absence of production of Khatauni Pamaish, Khatauni Istemal and Naksa Hakdarwar in order to connect the

property in dispute. There is another important matter. The plaintiffs did not summon the Kanungo or Patwari Moharrir along with the original revenue record available with them for comparison of the khasra numbers. Therefore, the plaintiffs have failed to prove that they have inherited the property in dispute from their predecessor-in-interest. In reaching this conclusion, the Appeal Court relied on a decision of this Court in **Hawa Singh vs. Daya Nand and others**, 2010 (2) Civil Court Cases 720 (P&H). When there is no comparison of the pleaded case with the revenue record, the plaintiffs must fail and, therefore, the principal argument of the learned counsel for the appellants based on Section 14 of the Hindu Succession Act, 1956 is misplaced that Smt. Gurdev Kaur – defendant No.1 would only have right to maintenance out of the estate of her husband with no absolute rights to property. The law on the subject has been settled by the Supreme Court in **V. Tulasamma vs. Sesha Reddy**, (1977) 3 SCC 99.

I have no reason to differ with the concurrent findings of fact or law there being no error in either of them which may give rise to substantial questions of law to interfere with in jurisdiction under Section 100 CPC.

The substantial questions of law as framed in the memorandum of appeal do not arise for answer in this case on the facts presented.

Accordingly, this appeal has no life and is rejected.

(RAJIV NARAIN RAINA)
JUDGE

20.04.2015
manju