

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

RSA No.2464 of 2015.
Decided on: 10.8.2015.

Sukhbir Kaur

... Appellant

Versus

Sant Ram and others

... Respondents

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Arvind Singh, Advocate, for the appellant.

K.C.PURI.J.

C.M. No.6459-C of 2005.

For the reasons mentioned in the application, delay of 325 days in re-filing the appeal stands condoned. CM stands disposed of accordingly.

C.M. No.6460-C of 2005.

2. For the reasons mentioned in the application, delay of 07 days in filing the appeal stands condoned. CM stands disposed of accordingly.

MAIN APPEAL

3. This appeal has been directed by the plaintiff appellant against the judgment and decree dated 19.02.2014 passed by Sh. Jaswinder Sheemar, Additional District Judge, SAS Nagar, Mohali whereby the appeal

filed by the defendants against the judgment and decree dated 04.02.2013 passed by Sh. Ranjeev Kumar, PCS, Additional Civil Judge (Senior Division), Dera Bassi was accepted and the suit of the plaintiff was dismissed.

4. In brief the plaintiff filed suit on the allegations that the plaintiff being daughter of coparcener has got right by birth as a coparcener in view of Section 6 and 6-A of Hindu Succession Act, 1956. The plaintiff is daughter of Sant Ram who is co-sharer in the land in dispute. The defendants No.3 and 4 Jagmohan Singh and Harvinder Singh are sons of Sant Ram from his second wife. The land in dispute is ancestral and coparcenary property and it has come to Nasib Singh from his father Nand Ram and Charan Singh, Ram Lal and Sant Ram sons of Nasib Singh got the land in dispute directly from Nand Ram. The plaintiff and her mother Amar Kaur had been residing at village Sadhanpur Tehsil Dera Bassi at the parents house of Amar Kaur since long and they had filed a suit for maintenance as well as suit for getting the marriage expenses in the law Courts. Now the plaintiff is residing at village Manakpur teshil Rajpura at her in-law's house. The plaintiff number of times requested the defendant to admit the claim of the plaintiff regarding her share, but defendants instead of accepting the request of the plaintiff are threatening to alienate, transfer and encumber the land in dispute which is totally wrong and illegal. Hence, the suit.

5. On notice, the defendants filed joint written statement raising preliminary objections of maintainability, locus standi, the defendants being Jat by caste and Hindu Law does not apply etc. On merits, the defendants

submitted that the land in dispute is not joint Hindu Family coparcenary ancestral property. The factual position is that Nand Ram, grand father of defendant No.2 was owner in possession of the land measuring 190 bighas 14 biswas who was exclusive owner in possession of the land because the coparcenary property was seized to be in exclusive property of Nand Ram being only son and the land measuring 190 bighas 14 biswas in dispute never came to Nasib Singh. The grand father of defendant No.2 Nand Ram during his life time transferred the land in dispute in favour of defendant No.2 and other brothers. So, the suit property never came in inheritance. The property measuring 21bigha 3biswas comprising in khewat/khatoni No.14/27 consisting khasra No.384/357 (1-9), 358 (4-0), 360 (4-0), 361 (4-0), 362 (3-14) is the exclusive property of Nasib Singh defendant No.1 and never came to him from ancestral property and the same is self-acquired property of Nasib Singh, defendant No.1 purchased by him from his own funds. So, there is no property which can be deemed to be joint Hindu Family ancestral and co-parcenary property. The plaintiff is not co-sharer nor can be co-sharer in the land in dispute. The property in dispute is not an ancestral property. The property in dispute never came to Nasib Singh, defendant No.1 from his ancestors or father Nand Ram. However, the land measuring 190Bigha 14Biswas came to Charan Singh, Ram Lal and Sant Singh, who are exclusive owner of the disputed land. It is admitted that plaintiff and her mother are residing separately after getting divorce from defendant No.2 and he is paying the maintenance to the plaintiff and her mother. However, the maintenance allowance of the plaintiff has been

revoked by the order of the Court due to her marriage. The plaintiff is not entitled to have any share in the land in dispute. Therefore, no cause of action accrued for filing the present suit.

6. Replication was filed in which all the averments made by the defendants in written statement were denied being wrong and that of original plaint were reasserted.

7. From the pleadings of the parties following issues were framed:-

1. Whether plaintiff is entitled to the declaration as prayed for ? OPP
2. Whether plaintiff is entitled to the permanent injunction as prayed for ? OPP
3. Whether the plaintiff has not come to the Court with clean hands and has suppressed true and material facts from the Court ?OPD
4. Whether plaintiff has no locus standi to file the present suit ?OPD
5. Relief.

8. After appraisal of the evidence, the suit of the plaintiff qua relief of permanent injunction was dismissed but the suit of the plaintiff qua relief of declaration was decreed vide judgment and decree dated 4.2.2013 passed by Sh. Ranjeev Kumar, PCS, Additional Civil Judge (Senior Division), Dera Bassi.

9. Feeling dissatisfied with the aforesaid judgment and decree dated 4.2.2013, the defendants filed appeal. Vide judgment and decree dated 19.2.2014 passed by Sh. Jaswinder Sheemar, Additional District Judge, SAS Nagar Mohali, the appeal was accepted and the suit of the plaintiff was

dismissed.

10. Feeling dissatisfied with the aforesaid judgments and decrees dated 4.2.2013 and 19.2.2014 the plaintiff appellant has filed the present regular second appeal.

11. The appellants in paragraph No.10 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (a) Whether Ld. Lower appellate court has wrongly and illegally interpreted the provisions of the Hindu Law and Hindu Succession Act ?
- (b) Whether the suit of the appellant/plaintiff is liable to be decreed in toto as per the facts and circumstances in the present case ?
- (c) Whether the judgment and decree dated 19.02.2014 passed by the ld. Lower appellate court and findings therein are apparently wrong, illegal and arbitrary ?
- (d) Whether the grave miscarriage of injustice has been caused to the Appellate/Plaintiff ?

12. I have heard learned counsel for the appellant and have gone through the records of the case.

13. Learned counsel for the appellant has submitted that Will has been claimed in favour of Sant Singh, Ram Lal and Charan Singh but that has not been produced on the file. It is proved on the file that property in dispute is Joint Hindu Family Coparcenary Property, Sukhbir Kaur being coparcener, according to amended Hindu Succession Act is entitled to declaration that she is owner of 1/12 share being granddaughter of Sant Singh.

14. I have carefully considered the said submission but do not find any force in that submission.

15. The questions of law framed by the appellant do not exist at all. The First Appellate Court has rightly held that in the presence of Sant Ram, the plaintiff has no right to file the suit for declaration and permanent injunction. It is also settled law that karta cannot be restrained from alienating the coparcenary property and the only remedy available to the aggrieved person ie. coparcener is to challenge the sale deed on the ground of legal necessity. Otherwise also, the appellant has failed to prove that property in dispute is Joint Hindu Family Coparcenary Property.

16. So, in view of the above discussion, the appeal is meritless and the same stands dismissed.

17. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

August 10 , 2015
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