

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3442 of 2015 (O&M)

Date of Decision: 03.08.2015

Surjit Kaur through her LRs

.... Appellants

Versus

Ranjit Kaur and others

.... Respondents

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

Present: Mr. O.P. Goyal, Sr. Advocate,
with Mr. Randeep Singh, 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.

1. Ajaib Singh son of Hazura Singh died on November 16, 1983. He left behind three sons namely, Naginder Singh, Malkiat Singh and Jasmail Singh and two daughters Surjit Kaur (plaintiff) and Ranjit Kaur (one of the defendants). After the death of Ajaib Singh, Malkiat Singh and Jasmail Singh propounded the last Will and testament of Ajaib Singh dated November 04, 1965 by which the testator bequeathed his entire property to to the two and to the exclusion of their brother Naginder Singh and sisters Surjit Kaur and Ranjit Kaur. The alleged Will became subject matter of litigation brought by Naginder Singh which resulted in a civil court decree dated April 04, 1996 in Civil Suit # 242 filed on May 06, 1982. The trial court discarded the Will as not a genuine document. The appeal preferred by Malkiat Singh and Jasmail Singh failed before the learned Additional District Judge, Ludhiana vide judgment and decree dated August 17, 1998.

Accordingly, the mutation of inheritance was sanctioned in favour of the three brothers Malkiat Singh, Jasmail Singh and Naginder Singh. The three brothers inherited the property equally to the extent of 1/3rd share each in the estate of their father. Within three years of the appellate decree passed by the court of first appeal in the previous litigation, Surjit Kaur filed the present suit # 927 of 18.07.2001 claiming 1/5th share in the co-parcenary and Joint Hindu Family Property on the ground that her father Ajaib Singh was not competent to dispose of ancestral property by will.

2. It was the case that while Jasmail Singh and Malkiat Singh had inherited property of the father they had also property self-acquired which was also thrown in the pool of inheritance by Surjit Kaur to claim share in it to the extent of 1/4th of the total property, inherited and self-acquired.

3. In the present suit, Surjit Kaur challenged the decree passed by the trial court as affirmed in Civil Appeal # 66 of April 26, 1996 as one which was obtained by playing fraud and misrepresentation with the court. Surjit Kaur in her plaint asserted that her father Ajaib Singh was Karta of Joint Hindu Family property which was co-parcenary property. If Ajaib Singh was Karta of co-parcenary property then suit property as per Mitakshara branch of the Hindu law had to devolve upon the male lineal descendants of Ajaib Singh as the co-parcenary could not admit female as its member. It is only upon a partition that a female can claim share in suit property. It may be mentioned that the earlier suit filed by Naginder Singh the 3rd brother had resulted in nullification of the will set up by Malkiat Singh and Jasmail Singh. However, the plaintiff failed to lead any evidence to support the property purchased by Jasmail Singh and Malkiat Singh was

was not self-acquired property but this assertion should not detain us for further discussion. The more important fact is that the subordinate courts held that the plaintiff was not in possession of the property as she resided in Canada. If she was not in possession then a mere suit for declaration is not maintainable. The suit was for declaration that plaintiff is owner in possession on the basis of succession to the estate of Ajaib Singh. When both the courts are one that Surjit Kaur did not have possession of the suit property then there was no prayer for recovery of possession and, therefore, the suit must fail as it is essentially a suit for declaration of rights and is hit by the proviso to section 34 of the Specific Relief Act, 1963 where it is prescribed that an omission to sue for further relief than a mere declaration of title is fatal to the action. The plaintiff was not truthful in making prayers in the suit insofar as possession over the suit property was concerned. On these premises, the suit failed in the court of first instance and in the court of first appeal. No evidence was led by the plaintiff to show that the decree in Civil Suit # 242 dated May 06, 1982 declaring the three brothers of Surjit Kaur as owners to the extent of 1/3rd share was obtained by fraud or misrepresentation.

4. There is another insurmountable barrier in the way of the plaintiff to claim relief as noticed by the court of first appeal. The suit was filed in the year 2001 and during the pendency of the proceedings Surjit Kaur died on September 07, 2003. The suit was filed by Surjit Kaur through her general attorney Sikander Singh son of Jasmail Singh Gill. Jasmail Singh alias Jasmail Singh Gill [one of the three brothers] is none other than the father of Sikander Singh [Gill] the general power of attorney holder of the

plaintiff. Therefore, the court of first appeal quite correctly observed that the suit was a proxy litigation by Jasmail Singh whose share was reduced from half to 1/3rd in the litigation initiated by brother Naginder Singh in which the will of Ajaib Singh was set aside. The court reasoned that when Surjit Kaur died her power of attorney came to an end. No doubt, the legal representatives of Surjit Kaur were impleaded in the civil suit but none of them preferred an appeal against the judgment and decree of the learned trial court dated June 05, 2012. Interestingly, Sikander Singh Gill the erstwhile power of attorney holder filed the first appeal on August 02, 2012 on behalf of Surjit Kaur despite the fact that she had expired nine years prior to the filing of the appeal. The court held that the appeal having been filed by a dead person is a nullity in the eyes of law. The court of first appeal did not find any merit in the contention of the appellant that Charanjit Kaur, one of the legal heirs of Surjit Kaur executed the power of attorney Ex.P-5 in favour of Sikander Singh Gill during the pendency of the civil suit to carry on the litigation. This did not save the appeal from the death blow of maintainability. Besides, Sikander Singh Gill did not seek amendment of the appeal for more than two years to file an application on behalf of LR Charanjit Kaur. Even, the memorandum of parties was not corrected which continued to remain the same as it was before the trial court. The application appears not to have been allowed by the court *a quo*. If it so it follows a priori that if Charanjit Kaur alone was aggrieved by the trial court decree then at best she could file a fresh appeal against the decree but she has not done so. In any case, a female has no right to inherit coparcenary property.

5. I would in the above scenario of facts find no infirmity in the appellate decree warranting interference. There is present in the judgment neither an error of fact or of law or any perversity and for the many reasons recorded above and by endorsing the opinion of the courts below as suffering from no material irregularity, I would dismiss the appeal.

6. In the present appeal, an application has been filed under Order 22 Rule 3 read with section 151 CPC for bringing on record the legal representatives of late Surjit Kaur by impleadment but I do not think the application can be allowed to cure a fundamental defect in the presentation of the first appeal on August 02, 2012, nine years after the death of Surjit Kaur. Interested parties, if any, are free to litigate, if advised. The application is consequently dismissed. As the main appeal has been dismissed, the pending applications, if any, shall stand disposed of as no orders are required to be passed therein.

(RAJIV NARAIN RAINA)
JUDGE

03.08.2015
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