

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

**RSA No.46 of 2015 (O & M)
Date of Decision:02.02.2015**

Daljit Singh and anotherappellants

Versus

Lajam Singh (deceased) through LRs.respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Mansur Ali, Advocate
for the appellants

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was dismissed by the trial Court vide judgment and decree dated 12.05.2011. Appeal preferred against the said decree failed and was dismissed on 23.08.2014. This is how, plaintiffs are before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

Plaintiffs claimed a declaration that they were owners to the extent of 09K-19M being 1/4th share out of a land measuring 34K-12M comprised in khasra numbers as depicted in the plaint. Further that a sale deed dated 3/4July, 2002, executed by defendant No.1 in favour of defendant No.5 was wholly illegal and void. A decree for injunction was also claimed restraining defendant No.1 from alienating or interfering with the property more than his share. It was

averred that the ancestors of the parties were the owners of the land measuring 34K-12M as set out in the headnote of the plaint. It was maintained that Fateh Singh was father of Narain Singh, and he in turn was father of Lajam Singh and Partap Singh. Plaintiffs were sons of Lajam Singh i.e defendant No.1 and post death of Partap Singh, his estate was succeeded to by Bakhtawar Singh. Lajam Singh had three sons i.e. Daljit Singh, Surjit Singh (plaintiffs), Dilawar Singh (defendant No.2) and a daughter namely Santosh. Out of the total land measuring 34K, half share was inherited by Partap Singh and rest 17K-6M, devolved upon Lajam Singh defendant No.1. Plaintiffs happened to be the male members in the family and, thus, had share in the coparcenary property by birth. Therefore, defendant No.1 had no right to alienate the suit property in any manner, either to Dilawar Singh or to any other person. It was maintained that in an earlier suit between the plaintiffs and defendant No.1, Lajam Singh had admitted that the suit property was coparcenary. Defendant No.3 being a female member of the family had no right in the suit property, being coparcenary in nature. Defendant No.1 had executed a sale deed dated 03/04.07.2002 in favour of defendant No.5 and the same was illegal and non operative as he lacked authority to alienate the same. Plaintiffs claimed themselves to be in possession of a land measuring 3K, as the same was given to them by defendant in presence of the respectables of the village. Thus, they also claimed injunction to protect their possession qua the said land.

In defence, it was pleaded, inter alia, by defendants No.1 and 2 that the total land measuring 35K-17M was jointly owned by

Partap Singh and Lajam Singh (defendants) to the extent of half share each. And the same was their self acquired property and was not ancestral in nature. It was maintained that share of Partap Singh had devolved upon his legal heirs post his death, whereas defendant No.1 was exclusive owner in possession of the rest half share i.e.measuring 17K-6M. Therefore, defendant No.1 had every right to execute the sale deed dated 04.07.1992, in favour of Bakshi Ram. Accordingly, claim of the plaintiffs to be in possession of a land measuring 3K was denied in absolute terms.

In a separate written statement filed by defendants No.5 to 7, it was pleaded, inter alia, that the present suit was filed by the plaintiff in collusion with defendants No.1 to 4 to defeat the rights of defendant No.5. They also maintained that the suit property was not ancestral in nature and, therefore, sale deed executed by defendant No.1 was valid. Further, defendant No.5 claimed himself to be a bona fide purchaser for consideration without notice.

Trial Court, on a consideration of the matter in issue and the evidence on record, found that for plaintiffs to prove that the suit property was indeed ancestral and coparcenary, they were required to prove that the same was inherited through three descendants i.e.father, father's father and father's father's father. A reference in this regard was also made to certain decisions of this Court. It was observed that plaintiffs to prove their claim, had relied upon excerpt Ex.PW4/A and examined Amarjit Singh, Kanungo-PW4, to prove the excerpts. However, Amarjit Singh-PW4, testified in his cross-examination that the translation of the jamabandis (revenue record)

from Urdu to Punjabi was not in his handwriting. In fact, one Hari Singh had translated these jamabandis from Urdu to Punjabi and had narrated the same to him i.e. Amarjit Singh-PW4. He also conceded that he could not read Urdu and whatever was narrated to him by Hari Singh upon translation from Urdu to Punjabi, he merely jotted it down. That being so, translation of the jamabandis from Urdu to Punjabi was concededly not carried out by Amarjit Singh-PW4 and, thus, it was imperative for the plaintiffs to examine Hari Singh himself, who translated the contents of the jamabandi from Urdu to Punjabi. Accordingly, it was observed that excerpt Ex.PW4/A could not be relied upon in the absence of testimony of Hari Singh. Even otherwise, it was observed that from an analysis of the excerpt Ex.PW4/A, it could not be said that suit property was ancestral in nature. Excerpt Ex.PW4/A was divided into 19 parts and contained translation of jamabandi from the year 1903 to 1904 till 2002 to 2003. And the jamabandi for the year 1903-04 revealed that Hari Dutt was recorded to be the owner in column No.4 and Dhad Singh was shown to be in possession in column No.5. Further, there was only one khasra No. i.e.88 that was common with the suit property. Likewise, in jamabandi for the year 1907-08 Fateh Singh, grandfather of Lajam Singh was depicted only as an occupant but the ownership of the land was again recorded in the name of Haria. Jamabandi for the year 1915-16 showed Narain Singh son of Fateh Singh in occupation but in the column of ownership Hari Dutt was reflected as owner. Even in the jamabandis for the year 1923-24, 1927-28, Narain Singh was only shown to be in possession and not as owner. Again,

jamabandis for the year 1935-36, 1939-40 continued to reflect the same position. And thereafter, in the jamabandi for the year 1943-44, father of the plaintiffs i.e. Lajam Singh was shown to be in occupation but in column No.5 Hari Singh etc. were shown to be the owners. However, abruptly, in the jamabandi for the year 2002-03, Lajam Singh was shown to be a co-sharer. That being so, it was concluded that the plaintiffs failed to join all the links together so as to prove the devolution of property from Fateh Singh to Narain Singh and from Narain Singh to Lajam Singh. Even the property as specified in the excerpt Ex.PW4/A was not shown to be owned by Fateh Singh and Narain Singh. Further, a reference to the cross examination of Bakshi Ram-DW1 to suggest that he had conceded the suit property to be coparcenary in nature was counter productive to the claim of the plaintiff since the suggestion that was put to him was *"I suggest that the suit property is not coparcenary property"*, to which he (DW1) replied *"it is wrong"*. And, in any case, he was merely a subsequent purchaser and, thus, his admission as regards determination of the nature and character of the suit property, was hardly of any consequence in law. As regards writing (Ex.P1), alleged to be executed by Lajam Singh, it was observed that the said document finds no reference in the pleadings set out in the plaint and, thus, could not taken into consideration. Further, an analysis thereof could hardly prove that the nature of the suit property was ancestral. Likewise, reliance upon the judgement and decree (Ex.PX) in a suit titled as "Bakshi Singh versus Daljit Singh" was also misplaced as that was a suit for injunction simpliciter filed by Bakshi Ram-

defendant No.5 against Daljit Singh-plaintiff No.1 in the present suit. Therefore, the Court in the said proceedings was not required to determine title or nature and character of the suit property. Further, the suit property as reflected in Ex.PX had got distinctive khasra Nos.36, 37 and 397. Thus, it was concluded that plaintiff had failed to substantiate that suit property was ancestral and coparcenary. Claim of the plaintiffs as regards possession of a land measuring 3K- i.e.1½ share in khatauni No.205 and the rest in khatauni No.206 also remained un-substantiated on record. It was urged on behalf of the plaintiffs that the judgement (Ex.PX) showed that defendant No.5 i.e. plaintiff in the said suit was not found to be in possession of the suit property. However, an analysis of the said judgement revealed that, in fact, suit of defendant No.5 was dismissed as he alone was not found to be in possession of the suit land, as even the defendant, plaintiff No.1 in the present suit was also in possession of part of the suit land. However, nothing was said as to over which part of the suit property, defendant i.e. plaintiff No.1, was in exclusive possession. Therefore, in the absence of any evidence, least cogent plaintiffs were not even entitled to the injunction prayed for. Resultantly, the suit was dismissed.

Being dis-satisfied with the decree, plaintiffs preferred an appeal. First appellate Court, reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial Court and the findings recorded in support thereof.

I have heard learned counsel for the appellants and

perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Needless to assert, for plaintiffs to succeed they were required to prove that the suit property was indeed coparcenary and ancestral in nature. Concededly, Fateh Singh happened to be the grandfather of Lajam Singh-defendant No.1 and Lajam Singh happened to be the son of Narain Singh i.e. son of Fateh Singh. And plaintiffs are sons of Lajam Singh. There cannot be any dispute that to prove that the character of the property is ancestral, it has to be clinically substantiated that the same was inherited through three descendants i.e. father, father's father and father's father's father. However, nothing was brought on record to prove that the suit land was ever owned by Fateh Singh i.e. grandfather of Lajam Singh. In fact, the jamabandis brought on record by none other than the plaintiffs themselves showed that Fateh Singh was only shown to be in possession of the land reflected in the said jamabandis. Likewise, even Narain Singh son of Fateh Singh was only shown to be in possession, since in the column of ownership, Hari Dutt was recorded to be the owner. So much so, in the jamabandi for the year

1943-44, even father of the plaintiffs i.e.Lajam Singh was shown to be in occupation and Hari Singh etc. were recorded to be the owners in column No.4 of the jamabandi. No doubt, pursuant to an abrupt change in the record of rights, Lajam Singh was reflected as co-sharer in the jamabandi for the year 2002-03, but the fact remains that there was nothing on record to prove that it had devolved upon Lajam Singh from Narain Singh and upon Narain Singh from Fateh Singh. In short, plaintiff failed to lead any evidence to prove that the suit property in the hands of their father, i.e.Lajam Singh was ancestral coparcenary. That being so, dismissal of the suit of the plaintiffs was the only inevitable consequence.

Learned counsel for the appellants could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

02.02.2015

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(ARUN PALLI)
JUDGE