

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

RSA No.2842 of 2014 (O&M)

Date of decision: 09.10.2015

Smt. Surjit Kaur and others

... Appellants

Vs.

Shingara Singh and others

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. H.K. Brinda, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

Appellant-plaintiffs are in Regular Second Appeal against the concurrent finding of facts and law, whereby, the suit for declaration with consequential relief challenging the sale deed and transfer deed executed by Hans Raj in favour of the defendants, who are none else but brothers of plaintiff, has been dismissed.

Mr.H.K.Brinda, learned counsel for the appellant-plaintiffs submits that property at the hands of Hans Raj was ancestral as he had inherited the same from his father. Both the Courts below have committed illegality and perversity in not appreciating the oral and documentary evidence, i.e., revenue record, which shows that property at the hands of Hans Raj was ancestral and erred in not

framing the specific issue with regard to character and nature of the property. In support of his aforesaid contention, relied upon the judgment of the Hon'ble Supreme Court in **Chebrol Sriramalu vs. Vakalapudi Satyanarayana 2014(3) Law Herald (P&H) 2123 (SC)**, to contend that as the issue with regard to nature of the property being ancestral or not, in case, issue is not framed, the matter is required to be remanded back to the trial Court. He further submits that before the lower Appellate Court, application under Order 41 Rule 27 Code of Civil Procedure, to bring on record the additional documents to prove that plea of loan amount of respondents was not blatantly belied, but the lower Appellate Court erroneously dismissed the application by holding that it tantamounts to filling up of lacunae. He further submits that once the appellant-plaintiffs did not have the knowledge of the aforementioned documents despite exercise of due diligence, the additional evidence cannot be said to have been thrown out for erroneous reasons and thus, submits that the appeal involves the determination of substantial questions of law.

I have heard learned counsel for the appellants and appraised the impugned judgments and decrees of the Courts below.

No doubt, the appellant-plaintiffs did not move an appropriate application for framing issues vis-a-vis character and nature of the property being ancestral at the hands of Hans Raj. Nothing prevented the plaintiffs to move an application by invoking the provisions of under Order 14 Rule 2 or 5 of Code of Civil

Procedure.

Be that as it may, on perusal of the findings rendered by the Courts below, it is revealed that parties to the lis were alive to the situation and led evidence in support of their respective claims, which fact is evident from perusal of paragraphs No.7 and 8 of the trial Court which read thus:-

“7 All these issues are interconnected and are being taken up together in order to avoid repetition of discussion. The onus to prove issue Nos.1, 2, 3 and 4 was upon the plaintiff whereas the onus to prove issue No.6 was upon the defendants. In order to prove his case, plaintiff Chhottu Ram has stepped into the witness box as PW-1 and tendered into evidence his affidavit, Ex.PW1/A, submitted on solemn affirmation, wherein, he reiterated the contents of the plaint, which needs no repetition here again. The plaintiff has proved on record jamabandi for the year 2002-2003 as Ex.P1, photo copy of Govt. Notificatin bearing No. S.O.-66/C.A.-2/1899/S-9/2001 dated 21.12.2001 as Ex.P2, photocopy of Transfer Deed as Ex.P3, photocopy of sale deed dated 06.07.2007 as Ex.P4, sale deed dated 04.12.1990 as Ex.P5, jamabandi for the year 1972-1973 as Ex.P6, jamabandi for the year 1936-1937 as Ex.P7 (Urdu language) and its Punjabi translation as Mark PW7/A,

jamabandi for the year 1953-1954 as Ex.P8 (Urdu language) and its Punjabi Translation as Mark PW8/A certified copy of mutation No.2459 as Ex.P9 and certified copy of order dated 27.07.2011 as Ex.P10.

8. *In order to rebut the evidence of the plaintiff, defendant No.2 Lachhman Singh has stepped into the witness box as DW-1 and tendered into evidence his affidavit, Ex.DW1/A, submitted on solemn affirmation, wherein, he reiterated the contents of the written statement, which needs no repetition here again. Defendant No.1 Shingara Ram has stepped into the witness box as DW-2 and tendered into evidence his affidavit, Ex.DW2/A, submitted on solemn affirmation, wherein, he reiterated the contents of the written statement, which needs to repetition here again. The defendants have also examined Mohinder Pal as DW-3, who has proved on record sale deed dated 27.12.2006 as Ex.D-1 and sale deed dated 06.07.2007 as Ex.D-1 and its endorsement as Ex.D-1/A. The defendants have proved on record certified copy of order dated 18.01.2008 as Ex.D2, jamabandi for the year 2002-2003 as Ex.D3, site plan as Ex.D4, sale deed dated 21.09.1979 as Ex.D5, OPD slips as Ex.D6 to Ex.D17, Laboratory form for Sputum examination as Ex.D18 and Ex.D19, Medical*

Prescription of Deep Nursing Home as Ex.D20, Medical Prescription of Kalyan Nursing Home as Ex.D21, Test Report ECG as Ex.D22 and Test report of Hans Raj as Ex.D23.”

The trial Court, while negating the plea of the plaintiffs, observed that plaintiffs failed to prove on record the specific evidence with regard to jamabandis and khasra numbers and thereafter withheld the evidence and thus, drew adverse inference as per the provisions of Section 114(g) of the Indian Evidence Act. Paragraph 12 of the trial Court reads thus:-

“12.The plaintiff has not brought on record any record of consolidation proceeding which could prove that the old khasra numbers mentioned in the jamabandies of the year 1936-37 and 1953-54 were changed into new khasra numbers as shown in jamabandi of the year 1972-73. Thus the plaintiff has withheld the best evidence available with him. Section 114(g) of the Indian Evidence Act provides that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. Thus the plaintiff has failed to prove on record that the land described in jamabandi of the year 1972-73 is the same land, which is shown in jamabandies of the year 1936-37 and 1953-54 and it was ancestral and coparcenary property.Furthermore, perusal

of jamabandi of the year 1972-73 shows that Santu grand father of the plaintiff had purchased share of Minder Singh in the land comprised in khasra nos.23//1/5(1-1), 10/2(0-2) and khasra No.281/(0-3) and it was self acquired property of Santu. Even if it is admitted that the suit land was ancestral property in the hands of Santu, then also it cannot be treated as ancestral property in the hands of Hans Raj father of the plaintiff. Perusal of Jamabandi of the year 1972-73 also shows that Hansu father of the plaintiff inherited the property from his father Santu vide mutation No.1409. As such Santu father of Hans Raj father of the plaintiff has died after the commencement of the Hindu Succession Act, 1956. The Joint Hindu Family property is the most important aspect of the law of the joint Hindu Family. The Joint Hindu Family property is like a big reservoir into which property flows in from various sources and from which all members of joint family draw out to fulfill their multifarious needs. Property inherited from any ancestor may be called ancestral property, but it is not in this sense in which it is used in Hindu Law. It has a technical meaning. Inherited property may be classified under the following three heads:

(a) Property inherited from father, father's father or

father's father's father,

b) Property inherited from maternal grand father, and

c) Property inherited from any other relation.

Section 8 of Hindu Succession Act reads as follows:

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

Section 8 governs succession of the property of a Hindu male and it implies that property must be such which is capable of devolving by succession. Under the traditional Hindu law, the Mitakshra law recognized two modes of devolution of property: (a) joint family property devolved by survivorship and (b) separate property devolved by succession. Under the Mitakshra law, when property passed into the hands of sole surviving coparcener. Then also it devolved by succession. On the other hand, under the Dayabhaga law, all properties devolved by succession. Under the traditional Hindu law, when a son inherits the property from his father, vis-a-vis sons, he takes it as joint family

property. Hindu Succession Act has now made a difference. This Act has introduced a new set of heirs and when a Hindu inherits the property from his father under Section 8, Hindu Succession Act, he takes it as his separate property and not as joint family property vis-a-vis his sons. Inherited property would lose its character of joint family property. The Act brought about a sea change in the matter of inheritance and succession amongst Hindus. Section 4 of the Act contains a non-obstante provision in terms whereof any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of the Act, ceased to have effect with respect to any matter for which provision is made therein save as otherwise expressly provided. Section 6 of the Act, as it stood at the relevant time, provided for devolution of interest in the coparcenary property. Section 8 lays down the general rules of succession that the property of a male dying intestate devolve according to the provisions of the Chapter as specified in clause (1) of the Schedule. In the Schedule appended to the Act, natural sons and daughters are placed in Class-I heirs but a grandson, so long as father is alive, has not been included. In the case law

titled as Musini Leela Parsad versus Musinin Bhavani and others 1995(2) Civil Court Cases 94, it has been held "Ancestral property inherited by son on the death of his father shall be treated as his separate property and his son is not entitled to a share in it by birth. In the present suit, admittedly, Santa father of Hansu has died after the commencement of Hindu Succession Act and estate of Santa was inherited by his son Hansu father of the plaintiff under Section 8 being his Class-I legal heir along with Dassu Ram. Thus, Hans Raja inherited this property as separate property and not as Joint Hindu Family Coparcenary Property. In view of the above discussion, I am of the considered opinion that suit property comprised in chaser no.23//1/5(1-1), 10/2(0-2) and khasra number 281/(0-3) and 210/2(0-19) as fully detailed in the head note of the plaint is not a Joint Hindu Family Coparcenary Property rather it was a separate property in the hands of Daya Ram."

It is settled law that when the parties were alive to the situation, despite the fact that specific issue has not been framed and led evidence, non-framing of particular issue would not be fatal. In order to lend support to the aforementioned finding, I rely upon the ratio decidendi culled out by the Hon'ble Supreme Court in **P. Purushottam Reddy vs. M/s Pratap Steels Ltd. 2002(2)**

R.C.R.(Civil) 70. Paragraph 9 and 10 of the judgment read thus:-

“9. Assuming that there was any deficiency in the pleadings and also an omission on the part of the trial court to frame a specific issue, the present one is a case where the applicability of the law laid down by this court in Nagubai Ammal and other vs. B.Shama Rao and others AIR 1956 SC 593, was squarely attracted. In Nagubai case this court was called upon to examine if the plea of lis pendens was not open to the plaintiff on the ground that it had not been raised in the pleadings. Neither the plaint nor the reply statement of the plaintiff contained any averment that the sale was affected by the rule of lis pendens. There was no specific issue directed to that question. However, evidence was adduced by the plaintiff on the plea of lis pendens and not objected to by the defendants. The question was argued and tested by taking into consideration the evidence that the proceedings were collusive in character with a view to avoid operation of [Section 52](#) of the T.P. Act. This court felt satisfied that the defendants went to trial with full knowledge that the question of lis pendens was in issue, had ample opportunity to adduce then evidence thereon, and fully availed themselves of the opportunity. This court formed the opinion that in the circumstances of the case,

absence of a specific pleading on the question was a mere irregularity which resulted in no prejudice to the defendants. After having noticed the rule of pleadings as applicable to civil law that "no amount of evidence can be looked into upon a plea which was never put toward", this court held. "The true scope of this rule is that evidence let in on issues on which the parties actually went to trial should not be made the foundation for decision of another and different issue, which was not present in the minds of the parties and on which they had no opportunity of adducing evidence. But that rule has no application to a case where parties go to trial with knowledge that a particular question is in issue, though no specific issue has been framed thereon and adduce evidence relating thereto".

10. In the case before us it was not the grievance raised by any of the parties before the High Court that there was any failure on the part of the trial court in discharging its obligation of framing issues. Nobody complained of prejudice at the trial for want of any issue or a specific issue. It was nobody's case that any evidence, oral or documentary, was excluded or not allowed to be taken on record by the trial court. The very fact that the defendant-appellants have come up to this court laying challenge to

the order of remand shows that the appellants are not interested in remand and do not want any additional issue to be framed or to adduce any further evidence. One of the pleas taken by the appellants in the memo of special leave petition is that the High Court had erred in remanding the matter back for fresh trial and the High Court had failed to appreciate that there was sufficient material on record to show absence of readiness and willingness on the part of the plaintiff to perform its part of the contract. On the other hand, after the passing of the impugned order of remand the plaintiff-respondent has also through his counsel, filed a memo before the trial court on 18.2.2000 submitting that on the additional issues framed pursuant to the direction of the High Court, the evidence on behalf of the plaintiff was already on record and the plaintiff would lead rebuttal evidence only if any evidence only if any evidence was adduced by the defendants. Thus the plaintiff is also not desirous of adducing any additional evidence on the issues.”

In view of the aforementioned observations, judgment relied upon by Mr. Brinda, is not applicable to the facts and circumstances of the present case as the judgment, in my view, is *per incuriam* and moreover, parties (therein) ad not even led evidence with regard to a particular issue.

Keeping in view the aforementioned observations, I do not intend to differ from the findings rendered by both the Courts below, which are based on appreciation of oral and documentary evidence, much less, no substantial question of law arises to be adjudicated by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 09, 2015
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