

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

RSA No. 3175 of 2014

Date of Decision: December 07, 2015

Jasbir Kaur and others

-Appellants

Versus

Atma Singh and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Mamli, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

{1}. Plaintiff is in second appeal in a suit for partition.

Plaintiff alleged that Mewa Singh was owner of house in dispute which was duly shown in Assessment Register of Municipal Committee, Shahabad Markanda at Sr. No. 303/3, 304/3 and 435/3. After the death of Mewa Singh, suit property was inherited by defendants and their three sisters namely Bachan Kaur, Inder Kaur and Tej Kaur. All the three sisters have already died and their shares have been inherited by the plaintiffs and

proforma defendant No.3.

{2}. Plaintiffs No.1 to 5 are heirs of Inder Kaur, plaintiffs No.6 to 11 are heirs of Bachan Kaur and plaintiffs No.12 to 17 are heirs of Tej Kaur. Plaintiffs further alleged that Mewa Singh never executed any Will during his life time in favour of any person. The suit property is joint of the parties and has not yet been partitioned by metes and bounds. Facing hardship in use and occupation of the joint land, remedy of partition was pressed into service. Defendants No.1 and 2 are sons of Mewa Singh.

{3}. The suit has been contested by the defendants on the ground of the suit land being ancestral. Defendant No.1 appeared and filed written statement questioning the pedigree table as projected by the plaintiffs nor the same was supplied. Both the defendants claimed themselves to be successors of Mewa Singh. The house in question left by Mewa Singh came into their possession in equal shares. Sisters namely Bachan Kaur, Tej Kaur and Inder Kaur had not claimed any share in the house. Since, the house in question was jointly owned and possessed by the defendants, therefore, there was no necessity of getting the same partitioned amongst the defendants.

{4}. Defendant No.2 has also filed his separate written statement, thereby pleading that the property in question was owned by forefathers of the defendants. Prior to Mewa Singh, it

was owned by his father namely Chatter Singh and, therefore, property in the hands of defendants was ancestral property. The property was rightly inherited by Mewa Singh. At the relevant time, there was no law of inheritance by females, therefore, at the time of death of Mewa Singh, sisters namely Bachan Kaur, Inder Kaur and Tej Kaur were not entitled to inherit any ancestral property being not part of coparcenary. All the sisters have already died. Bachan Kaur died 17 years ago, Inder Kaur died 16 years ago and Tej Kaur died 35 years ago.

{5}. On the basis of pleadings of the parties, following issues were framed by the trial Court:-

1. Whether plaintiffs are entitled for a decree of partition of the suit property against the defendants as prayed for? OPP
2. Whether the plaintiffs have no locus standi to file and maintain the present suit? OPD
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the suit of the plaintiffs is bad for non-joinder and mis-joinder of necessary parties? OPD
5. Whether the suit of the plaintiffs is time

barred? OPD

6. Whether the plaintiffs have concealed the true and material facts from the Court?

OPD

7. Relief.

{6}. Both the parties led evidence. Trial Court dismissed the suit on the basis of oral assessment of evidence on record and the plaintiff remained unsuccessful in first appeal before the lower Appellate Court also.

{7}. The testimonies of Gurmeet Singh PW1, Joginder Singh PW2 and Gurdass Singh PW3 have been discussed in detail. Gurdass Singh when stepped into witness box did not support the case of the plaintiffs.

{8}. Appellant has formulated following questions of law in para No.12 of the Grounds of Appeal:-

1. Whether the daughters are Class-I heir and having rights in the property of father?
2. Whether the judgment and decree passed by the Courts below by misreading the facts of the case and evidence on record?
3. Whether the judgment and decree passed by the Courts below are liable to be set aside?

{9}. I have considered the submissions made by learned counsel for the appellants.

{10}. The statements of PW1 Gurmeet Singh, PW2 Joginder Singh and PW3 Gurdass Singh have virtually demolished the case of the plaintiffs inasmuch as that Gurmeet Singh while appearing as witness in his cross-examination has stated that Jaswant Singh and Atma Singh have been shown as owners in possession and have specific portion in the house in the record of municipality. He also admitted that Atma Singh had also raised construction over the site falling in his share and Jaswant Singh had also raised construction on the land in his possession. He also deposed that he has never been in possession and no construction was raised by him. In this way, the statement of Gurmeet Singh was taken to be an instance of weakening the case of the plaintiff. The statement of Joginder Singh, PW2 is also in the same background. His specific deposition in cross-examination was that the suit land is ancestral land. He admitted Jaswant Singh to be owner in possession of the specific portion of suit land. Possession of Atma Singh being owner in possession has also been admitted. He also admitted the fact that Jaswant Singh and Atma Singh have constructed their respective shares in the suit land and factum of partition between Jaswant Singh and Atma Singh has

also been admitted by the witness. After the death of Mewa Singh, the land in question was divided between Jaswant Singh and Atma Singh. The witness also pleaded ignorance about Bachan Kaur, Inder Kaur and Dayal Kaur being daughters of Vasawa Singh. In this way, the witness did not support the case of the plaintiffs. Similarly, statement of Gurdass Singh did not support the plaintiffs inasmuch as that in his cross-examination, the witness has admitted that Jaswant Singh and Atma Singh have partitioned the suit land between them. None of the plaintiffs ever visited the suit property. No construction was raised by the plaintiffs. He has also admitted that his mother never claimed any share in the property during her lifetime. He has also admitted that suit land is ancestral land. He has pleaded ignorance about daughters of Vasawa Singh and Sewa Singh. He has also pleaded ignorance that his mother was daughter of Vasawa Singh. He has also admitted that he has no proof regarding Bachan Kaur and Inder Kaur being daughters of Mewa Singh.

{11}. On the other hand, the evidence of the defendant viz DW1 Jaswant Singh and documents Ex.D1 to D13 have been proved by the witness Jaswant Singh and the statement of DW1 and DW2 Amrik Singh remained unshattered in cross-examination. Both the Courts below relied upon the defence

version to be more appropriate and plausible and dismissed the suit of the plaintiff.

{12}. At the time of death of Mewa Singh, when the written statement was filed by defendant No.2, females were not entitled to be member of coparcenary property. It is only by amendment in Section 6 of Hindu Succession Act in 2005, right has been conferred upon females for the first time to have equal right in coparcenary property, however, as per proviso, the case is not covered under the said amendment. Even Bachan Kaur and Inder Kaur died long back. The plea in respect of Bachan Kaur and Inder Kaur not to be the real sisters of defendants No.1 and 2 and being daughters of Vasawa Singh has rightly been appreciated by the Courts below. Vasawa Singh having no son was succeeded by Mewa Singh. Since, death of Bachan Kaur took place about 16-17 years ago and Inder Kaur having died 35 years back, therefore, in considered opinion of this Court, the claim put forward by the plaintiffs is totally unfounded and cannot be accepted.

{13}. The questions as formulated by the appellant in Grounds of Appeal do not arise at all. Question No.1 cannot be appreciated as in view of amendment in Section 6 of the Hindu Succession Act, the right as on date was not available to the daughters at the time of death of Mewa Singh who died about

more than 40 years back. Even the daughters have already died long back, therefore, issue No.1 does not arise at all. Question No.2 does not arise inasmuch as that the findings recorded by the Courts below is based on proper evidence and there is no misreading of evidence rather evidence of the plaintiffs viz PW1, PW2 and PW3 have totally demolished the case of the plaintiffs. Question No.3 is not a law point much less substantial question of law. Judgments and decrees passed by the Courts below are not liable to be reversed on the basis of evidence on record.

{14}. No law point worth consideration is involved in this appeal. This appeal is accordingly dismissed. Since, the appeal is being decided on merits, therefore, no order on the application for condonation of delay is required to be passed.

December 07, 2015
 jyoti Y.

(RAJ MOHAN SINGH)
JUDGE