

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

RSA No.2255 of 1992 (O&M)

Date of Decision.27.08.2016

Kapoor Singh (since deceased) through LRs and othersAppellants

Vs.

Smt. Kartar Kaur (since deceased) through LRs and others

.....Respondents

Present: Mr. B.R. Mahajan, Senior Advocate with
Mr. Akhilesh Vyas, Advocate
for the appellants.

Mr. M.L. Saggar, Senior Advocate with
Ms. Armaan Saggar, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

AMIT RAWAL J. (ORAL)

The appellants-defendants are aggrieved of the concurrent finding of fact whereby the suit seeking declaration and specific relief of permanent injunction in respect of suit land measuring 8 bighas 5 biswas as described in the plaint, has been decreed by both the Courts below.

Mr. B.R. Mahajan, learned Senior Advocate assisted by Mr. Akhilesh Vyas, Advocate appearing on behalf of the appellants-defendants has raised the following multi-fold arguments in respect of grounds of appeal:-

- (i) Chanan Singh had three sons and two daughters, Sajjan Singh (since deceased) being represented by the plaintiffs i.e. widow-Kartar Kaur and the married daughter, Ajit Kaur @ Amarjit Kaur. Kapur Singh, Bhajan Singh were other two sons and Bhagwan Kaur and Bhajan Kaur, daughters, defendants in

the suit. Sajjan Singh, in the year 1979 i.e. on 24.01.1979 filed a suit for permanent injunction against his father and brothers from alienating the suit property. The aforementioned suit is Ex.P2. The written statement filed by Chanan Singh is Ex.P3 but on 06.03.1980, the counsel for defendant No.1-Chanan Singh in the suit made a statement that he will not alienate the suit property as the said property was in possession of Sajjan Singh. On the basis of the statement made by Chanan Singh, the counsel for the plaintiff-Sajjan Singh also suffered a statement and the suit was decreed qua injunction vide judgment and decree dated 06.03.1980, Ex.P-7. After that a suit, Ex.P13, was filed by Kapur Singh and Bhajan Singh for declaration claiming ownership in respect of remaining land measuring 22 bighas 15 biswas on the premise that the property was joint family/coparcenary property, as Sajjan Singh was living separately from the joint family. In the aforementioned suit, Chanan Singh filed the written statement, Ex.P14 and conceded the claim of Kapur Singh and Bhajan Singh and accordingly, the suit was decreed vide judgment and decree dated 19.01.1982, Ex.P11, for aforementioned land i.e. 22 bighas 15 biswas. On 14.06.1982, Sajjan Singh, filed civil suit claiming declaration of ownership with regard to 8 bighas 5 biswas but the same was dismissed on 03.01.1984. In the lower Appellate Court, with the permission of the Court, the aforementioned suit was withdrawn vide order dated 17.02.1986 with liberty to file fresh suit. In this background of

the matter, the present suit has been filed on 02.04.1986.

(ii) The appellants-defendants set up registered Will dated 05.09.1983, Ex.D1, vide which Chanan Singh had bequeathed the aforementioned land of 8 bighas 5 biswas amongst the grand children including the daughter of Sajjan Singh. Both the Courts below have disproved the Will to hold that the property was ancestral in nature and could not have been bequeathed or alienated except for legal necessity.

(iii) The plaintiffs had summoned the Kanungo as PW9 to prove the nature and character of the property as ancestral and brought on record the Excerpt, Ex.P1 but when subjected to cross-examination, he stated that it was the photocopy, in essence, he did not bring the original record and there was no compliance of the High Court Rules and Orders, as has been noticed in judgment rendered by this Court in **Banta Singh and others Vs. Phuman Singh and others 1972 PLJ 275.** He submits that the respondents-plaintiffs have failed to prove the nature and character of the property being ancestral and therefore, the property being self-acquired, the Will set up is valid, thus, the suit was liable to be set aside, thus, urges this Court for formulation of the substantial questions of law.

Per contra, Mr. M.L. Saggar, learned Senior Advocate assisted by Ms. Armaan Saggar, Advocate appearing on behalf of the respondents-plaintiffs submits that the arguments of Mr. Mahajan, learned Senior Counsel appearing for the appellants with regard to production of the original Excerpt is totally misplaced as when the aforementioned Excerpt

was tendered, the objection qua its mode of proof and admissibility was not taken. Chanan Singh had already in suit Ex.P13, filed written statement Ex.P14 *ibid*, admitted the nature and character of property being ancestral and therefore, there was no further evidence required to be led to prove the same. Rightly so, the Courts below have discarded the registered Will though alleged to have been executed in accordance with law. He further submits that the suit instituted by the defendants, Ex.P13, itself shows that there was implied partition amongst siblings. The concurrent finding of fact cannot be interfered with unless and until there is gross illegality and perversity or any substantial question of law arises for determination, thus, urges this Court for confirming the findings rendered by both the Courts below under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that the second appeal is liable to dismissed for the following reasons:-

(i) In Ex.P-13 i.e. civil suit filed as Kapoor Singh and Bhajan Singh Vs. Chanan Singh in para 3, following averments were made:-

“3. That one Shri Sajjan Singh brother of the plaintiff and son of the defendant separated himself from the defendant and forcibly occupied a portion of land measuring 8 bighas 5 biswas out of khasra No.17, 18, 19 and land measuring 14 biswas in khasra No.993 filed a suit for injunction against the defendant as well as the plaintiffs in the Court of Shri S.C. Marwaha, PCS, Sub Judge, Ludhiana wherein a compromise was arrived between the defendant and Shri Sajjan Singh, the defendant made a statement that he shall not sell land measuring 8 bighas 5 biswas from khasra No.17, 18, 19 and land measuring 14 biswas in khasra No.993, which are in

possession of the plaintiff. The copy of jamabandi is attached herewith the plaint.”

The aforementioned averment leads to an irresistible conclusion that there was an implied partition amongst the siblings as the defendants did not stake claim in respect of the property measuring 8 bighas 5 biswas because Sajjan Singh was found to be in possession in view of the judgment and decree dated 06.03.1980, Ex.P7.

(ii) The defendants also respected the act of their father by not staking claim and in my view, cannot set up a plea of having an interest in the aforementioned property on the basis of the testamentary document. No doubt, the original Excerpt has not been produced but the peculiar facts and circumstances of the case reveal that the property had fallen from forefathers and therefore, its character and nature is to be treated as ancestral. By confirming the finding of the Courts below, I want to make it clear that appellants-defendants successor-in-interest of Chanan Singh cannot stake claim in respect of land measuring 8 bighas 5 biswas and vice versa.

(iii) Even in my view, the judgment and decree is based upon the equitable grounds as the defendants have already been taken care as per the judgment and decree dated 19.01.1982, which has not been challenged by Sajjan Singh. Sajjan Singh, being elder brother among other siblings, has also shown respect to the judgment and decree dated 19.01.1982 otherwise he could have challenged the same on the premise that he was not

impleaded as defendant in the suit Ex.P13. This itself shows that there was an implied partition.

In my view, the Courts below have rightly decreed the suit and discarded the Will and the judgments and decrees passed by both the Courts below do not warrant interference. Accordingly, the judgments and decrees passed by the Courts below are upheld and the second appeal is dismissed, as no substantial question of law arises, much less, there is illegality and perversity.

(AMIT RAWAL)
JUDGE

August 27, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No