

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No. 862 of 1995 (O&M)

Date of decision: January 15, 2016.

Harmel Singh and Another

... Appellants

Versus

Hardial Singh (Deceased) through L.Rs and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. M.L. Saggar, Sr. Advocate with
Mr. Sunny Saggar, Advocate
for the appellants.

Mr. Amit Jain, Advocate
for the respondents.

SURINDER GUPTA, J

This regular second appeal has been filed against the judgment and decree dated 7.5.1987 passed by Sub Judge Ist Class, Jagraon whereby suit of plaintiff-respondent no.1-Hardial Singh (since deceased), for joint possession being owner of the land measuring 27 kanals 10 marlas i.e. 1/5th share of the land measuring 137 kanals 9 marlas, as fully detailed in the head note of the plaint, was decreed.

2. The case of plaintiff, in brief, is that the land measuring 128 kanals situated in village Talwandi Rai and 8 kanals 16 marlas situated in village Burhmi, Tehsil Jagraon, as fully detailed in the head note of the plaint, was joint Hindu coparcenary property of Arjan Singh, plaintiff

Hardial Singh (since deceased) and defendants no.1 and 2 Bhajan Singh and Harnam Singh sons of Arjan Singh. Ownership of suit land was recorded in the name of Arjan Singh being *karta* of the family. The parties are Hindu *jat* governed by Hindu law. Arjan Singh died on 22.12.1980 and the suit property devolved on plaintiff and defendants no.1 and 2 in equal shares.

3. Defendants no.3 and 4 (appellants herein) claimed themselves to be owner of 90 kanals 1 marla out of the suit land situated in village Talwandi Rai and 1 kanal 3 marla situated in village Burhmi on the basis of civil court decree dated 18.11.1980 suffered by Arjan Singh in their favour on the basis of family settlement. Arjan Singh was not competent to transfer the land in the presence of his sons i.e. plaintiff and defendants no.1 and 2, as such, the decree dated 18.11.1980 is not binding on the plaintiff.

4. Defendants no.3 to 9 alleged Will dated 30.3.1972 executed by Arjan Singh in their favour. The said Will was also challenged as illegal, null and void on the ground that Arjan Singh never executed the Will and in alternative he was not competent to execute the said Will.

5. Defendants no.1, 5, 6, 11 and 12 did not contest the claim of plaintiff and were proceeded against ex-parte.

6. In the written statement, jointly filed by defendants no.2, 3, 4 and 10, it was alleged that the suit property was self-acquired property of Arjan Singh and parties are not *jat* Hindu rather they are governed by agricultural custom prevailing in the Punjab amongst the *jat* sikhs in the matter of alienation and succession. Arjan Singh left behind plaintiff, defendant no.1 and defendant no.2 as sons and defendant no.10-Chhoto alias Ajaib Kaur, his daughter and defendants no.11 and 12 sons of pre-

deceased daughter of Arjan Singh. All the above legal heirs are entitled to inherit the remaining property left by Arjan Singh to the extent of 1/5th share for plaintiff, defendant no.1, 2 and 10 and 1/5th share for defendants no.11 and 12 jointly. However, defendants no.1, 2, 10, 11 and 12 are not having any claim in the property given to defendants no.3 and 4 through civil court decree dated 18.11.1980. Defendants no.3 and 4 have become sole owner of the land measuring 91 kanals 4 marla situated in village Talwandi Rai and village Burhmi, Tehsil Jagraon. The above property was given to defendants no.3 and 4 in family settlement with Arjan Singh and mutation in their favour, on the basis of decree was rightly sanctioned and they are in possession of the above land.

7. Defendants no.2 to 4 and 10 in their written statement denied the execution of any Will by Arjan Singh.

8. Defendants no.7, 8 and 9 filed separate written statement alleging therein a registered Will dated 30.3.1972 executed by Arjan Singh by way of which his entire property was bequeathed in favour of defendants no.3 to 9. They also challenged the decree dated 18.11.1980 as illegal, null and void.

9. The plaintiff re-asserted his claim in the replication. Pleadings of the parties lead to the framing of issues as follows :-

1. *Whether the property in dispute is a joint Hindu Family Coparcenary property?*
2. *Whether the decree dated 18.11.1980 is illegal, void and liable to be set aside?*
3. *Whether Arjan Singh, deceased executed a Will dated 30.3.1972 in favour of defendants no.3 to 9?*

4. *Whether the parties are governed by custom, if so, what that custom is?*
5. *Relief.*

10. The suit of the plaintiff was decreed by the then Sub Judge Ist Class, Jagraon vide judgment dated 6.10.1983. In appeal filed by defendants no.3 and 4, following additional issues were framed and the case was remitted for fresh decision :-

- 1(a) *Whether the plaintiff has a locus standi to file the suit?OPP*
- 2(b) *Whether the plaintiff is estopped by his act and conduct from filing the present suit?OPD*
- 3(c) *Whether the Will dated 30.3.1972 is forged Will as alleged in this plaint?OPP*

11. While deciding the case vide judgment dated 7.5.1987 Sub Judge Ist Class, Jagraon observed that the suit property is joint Hindu family coparcenary property and in the matter of inheritance parties are not governed by any custom. The decree dated 18.11.1980 was set aside. It was held that Will dated 30.3.1972 in favour of defendants no.3 to 7 was not duly proved as such the plaintiff has locus standi to file the suit.

12. The first appellate court up-held the findings of the court below and dismissed the appeal filed by defendants no.3 and 4 (appellants herein).

13. I have heard learned counsel for parties and have perused the paper book and lower court record with their assistance.

14. The points raised and answered by the court below in this case are as follows :-

- (i) *Whether the property in dispute is joint Hindu coparcenary property?*

Both the courts below answered in affirmative.

- (ii) *Whether Arjan Singh had partitioned the joint property with his sons during his life time by giving them separate shares?*

This question was also answered in negative. The Sub Judge Ist Class, Jagraon even declined to look into this plea being beyond pleadings. It was also observed that no partition, oral or documentary, between Arjan Singh and his sons was brought on file regarding 13 killas of land given to his sons by Arjan Singh. It was observed that the same may be for the purpose of cultivation only. It was concluded that defendants have failed to establish that the ancestral property was finally partitioned. Similar view was taken by the first appellate court.

- (iii) *Whether Arjan Singh executed Will dated 30.3.1972?*

Both the courts below answered this issue in negative.

15. Findings of the trial court that decree suffered by Arjan Singh in favour of appellant is bad for non-registration was, however, set aside by first Appellate Court but at the same time it was observed that Arjan Singh was not competent to transfer the land as the same was joint Hindu family coparcenary property.

16. Learned counsel for the appellants-defendants has argued that the concurrent findings of both the Courts below are based on erroneous notions, presumptions and surmises. Firstly, the fact that Arjan Singh has separated his sons during his life time by giving them shares in his land vide mutation No.3405 dated 26.12.1954 (Ex.D11 on record) was not taken note by trial Court and the first Appellate Court ignored this vital piece of evidence with the observation that the land was given only for the purpose

of cultivation. Secondly, the plaintiff had admitted that all the sons of Arjan Singh were living separate and had their separate cultivation. Thirdly, the onus was on the plaintiff to prove that the land in the hands of Arjan Singh was joint Hindu family coparcenary property. They led absolutely no evidence to prove this fact. There is not an iota of evidence on record that the suit land situated in village Talwandi Rai or Burhmi was inherited by Arjan Singh from his predecessors. Rather, jamabandi for the year 1944-45 (Ex.D3) proves that the land at village Talwandi Rai was purchased by Arjan Singh. In the entire revenue record placed on record, Arjan Singh is recorded as sole owner of suit land, which conclusively proved that the land in dispute was not a joint Hindu family coparcenary property. Fourthly, the absence of any evidence that suit land was joint Hindu family coparcenary property in the hands of Arjan Singh, the Courts below have drawn an inference that the land of village Burhmi was purchased by Arjan Singh from the income of the joint Hindu family coparcenary property, is against facts on record and erroneous. Fifthly, both the Courts below have relied on the averments in the plaint (Ex.P1), wherein the appellants have alleged that the suit land was joint Hindu family property, which Arjan Singh had given them on partition. The above pleading of appellants, in no manner, proves that the suit land was joint Hindu family coparcenary property of Arjan Singh and his sons and this fact is required to be proved by leading some cogent and convincing evidence. These averments were inter-se, appellants Harmel Singh, Jagrup Singh and Arjan Singh. Even after separating his sons by giving them shares of land, Arjan Singh continued jointness of his property with his grand sons and the pleadings are to be read in that context

and not as proof of the fact that the suit land was joint Hindu family coparcenary property. Sixthly, the documents on record prove that after the partition of land with his sons Arjan Singh gave major share in his land of village Burhmi to his sons and retained the land of village Talwandi Rai. His jointness of family with his sons got severed in the year 1954. This fact was admitted by the plaintiff and his witness that there was no jointness of family or mess between plaintiff and Arjan Singh. Both the Courts below have recorded findings that suit land was joint Hindu family coparcenary property, against facts and by ignoring the vital evidence on record.

17. Learned counsel for the respondent No.1-plaintiff has argued that the appellants themselves have pleaded in the civil suit filed by them that the suit land was joint Hindu family coparcenary property. Now, they are estopped from alleging the suit land as self-acquired property of Arjan Singh. Both the Courts have rightly relied on the admission of appellants while reaching the conclusion that the suit land is the joint Hindu family coparcenary property. Though the land situated at village Talwandi Rai was purchased by Arjan Singh but it was purchased from the income from the land situated at village Burhmi, which was joint Hindu family coparcenary property, as such, has rightly been held as joint Hindu family coparcenary property in the hands of Arjan Singh. About giving of land to his sons by Arjan Singh vide mutation No.3405 dated 26.12.1954 (Ex.D11), he has argued that the land was given to his sons by Arjan Singh only for the purpose of cultivation without dissolving the joint Hindu family. Moreover, the appellants have nowhere taken the plea that Arjan Singh had partitioned his property during his life time. As such, they stood debarred from harping

over the mutation (Ex.D11). Both the Courts have taken note of the above facts while decreeing the suit of the plaintiff. No substantial question of law requiring determination arises in this second appeal, calling for any interference by this Court.

18. On perusal of lower Court record, I find that the plaintiff filed this suit claiming the suit land to be joint Hindu family coparcenary property but produced no evidence to prove that this land devolved on Arjan Singh from his father or grand father. The revenue record produced on file shows that the suit property was exclusively owned by Arjan Singh and there is no evidence that it had devolved on him from his immediate predecessor. Vide mutation No.3405 dated 26.12.1954 (Ex.D11) Arjan Singh had given major part of his property situated in village Burhmi to his sons in the year 1954. There is admission of plaintiff and his witnesses that Arjan Singh was living separate from his sons and there was no jointness or cultivation. In view of the above facts, I am of the consideration opinion that it is a fit case which call for reappraisal of evidence. Hon'ble Apex Court in case of *Municipal committee, Hoshiarpur Vs. Punjab State Electricity Board & Ors 2010(13) SCC 216*, while discussing the scope of Section 100 and 103 of Civil Procedure Code (for short-CPC) has observed as follows:-

“22. Thus, it is evident that Section 103 C.P.C. is not an exception to Section 100 C.P.C. nor is it meant to supplant it, rather it is to serve the same purpose. Even while pressing Section 103 C.P.C. in service, the High Court has to record a finding that it had to exercise such power, because it found that finding(s) of fact recorded by the court(s) below stood vitiated because of perversity. More so, such power can be exercised only in exceptional

circumstances and with circumspection, where the core question involved in the case has not been decided by the court(s) below.

23. There is no prohibition on entertaining a second appeal even on a question of fact provided the Court is satisfied that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of fact in a routine and casual manner by substituting its subjective satisfaction in place of that of the lower courts. (*Vide: Jagdish Singh v. Natthu Singh, AIR 1992 SC 1604; Karnataka Board of Wakf v. Anjuman-E-Ismael Madris-Un-Niswan, AIR 1999 SC 3067; and Dinesh Kumar v. Yusuf Ali, AIR 2010 SC 2679*).

24. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eyes of law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (*Vide: Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors., AIR 2010 SC 2685*)”

19. Where the Court has ignored material evidence on record or acted on no evidence or have drawn wrong inference from the proved evidence by applying law erroneously, this Court may interfere with the concurrent findings of the Courts below. It was so held in *Hero Vinoth (minor) Vs. Sehsammal 2006(2) R.C.R. (Civil) 677*.

20. The substantial questions of law, which require determination

in this appeal, are as follows:-

- (i) *Whether the findings of the Courts below that the suit property is joint Hindu family coparcenary property, is based on evidence on record?*
- (ii) *What is the effect of giving separate land to his sons by Arjan Singh vide mutation No.3405 dated 26.12.1954?*
- (iii) *Whether the plaintiff and other sons of Arjan Singh constituted a joint Hindu family with him after 1954?*
- (iv) *Whether the Courts below have rightly held the suit property to be the joint Hindu family coparcenary property solely on the basis of averments in the plaint (Ex.P1) in earlier suit filed by the appellants?*

Discussion of documentary evidence on record:

21. The Courts below have relied on the pleadings contained in plaint (Ex.P1) filed by the appellants in civil suit No.339 of 16.10.1980, wherein they have pleaded that the suit land i.e. 90 kanals 1 marla situated in village Talwandi Rai and 1 kanal 3 marlas situated in village Burhmi was joint Hindu family coparcenary property. Ex.P3 is the copy of written statement filed by Arjan Singh, admitting the averments in the plaint as correct. Ex.P4 is the statement of Arjan Singh admitting the claim of the plaintiffs (present appellants) as correct. Ex.P2 is the statement of Harmel Singh. On the basis of these averments, the Courts below have concluded that the suit property was admitted to be joint Hindu family coparcenary property.

22. Ex.D1 is the copy of Will dated 30.03.1972 executed by Arjan

Singh. This Will was discarded by the first Appellate Court with the observations that original Will was not produced.

23. Jamabandi for the year 1975-76 of village Talwandi Rai was again marked as Ex.D1. As per this jamabandi, Arjan Singh was recorded to be the owner of land measuring 129 kanals 3 marlas situated in village Talwandi Rai.

24. Ex.D2 is the jamabandi for the year 1976-77 which shows Arjan Singh as owner of land situated at village Burhmi. (Power of attorney executed by Bahadar Singh son of Hardial Singh is again marked as Ex.D2. Power of attorney executed by Saudagar Singh and Nazar Singh sons of Hardial Singh is also marked as Ex.D2.)

25. Ex.D3 is the Jamabandi for the year 1944-45 of village Talwandi Rai which shows that Arjan Singh had purchased the land of this village with Roshan son of Rura and mutations No.2159, 2287, 2193 and 2213 were sanctioned in their favour. Ex.D4 is the jamabandi for the year 1955-56 which shows that Arjan Singh son of Saun Singh was exclusive owner of land measuring 42 bighas 4 biswas at village Talwandi Rai, which he had purchased from earlier owners. Ex.D5 to D7 are the copies of *Khatauni Istemaal*, *Naksha Haqdarwar* and *Khatauni Pemaish* prepared during Consolidation at village Talwandi Rai.

26. Ex.D8 is the copy of mutation No.11 sanctioned on 20.01.1981 on the basis of Civil Court decree dated 18.01.1980 in favour of appellants with regard to the land measuring 90 kanals 1 marla of village Talwandi Rai. Ex.D10 is the copy of mutation No.6060 pertaining to land of one Surjan Singh son of Fatta Singh. Ex.D11 is the copy of mutation No.6114

pertaining to the inheritance of land of Arjan Singh son of Jagta by his sons.

27. Vide mutation No.3405 dated 26.12.1954 (again marked as Ex.D11) Arjan Singh, father of plaintiff transferred his land measuring 21 bighas 9 biswas 7 biswansis in favour of his three sons namely Bhajan Singh, Hardial Singh (plaintiff) and Harnam Singh.

28. On perusal of the above evidence on record, it is evident that there is no documentary evidence on file to show that land in dispute was inherited by Arjan Singh from his forefathers. This evidence conclusively proves that Arjan Singh was exclusive owner of suit land which was his self-acquired property.

Oral evidence produced by plaintiff

29. Plaintiff examined PW1 Bakhtawar Singh, who has stated:-

(i) Arjan Singh father of plaintiff inherited some property (?) from his father and had also purchased some land from joint family funds.

(ii) Plaintiff was residing with Arjan Singh in his ancestral house. Bhajan Singh, defendant No.1 was also residing in that house. Harnam Singh another son of Arjan Singh was residing separately from them for the last more than 40 years (to be calculated before 1982 when his statement was recorded). Plaintiff and defendant were registered as separate voters in separate houses. They separated 2-3 years back.

(iii) Arjan Singh was not allotted any land in lieu of land left in Pakistan.

(iv) **Arjan Singh purchased six killas of land in village Burhmi.**

However, the same was transferred by him in favour of his sons.

30. PW2 Jagir Singh has also stated that Arjan Singh father of

plaintiff and defendant No.2 had purchased the property in dispute (property of village Talwandi Rai and Burhmi) but he was not aware when it was purchased.

31. Hardial Singh, plaintiff while appearing as PW5 has stated:-

(i) The land in suit was purchased by my grand father and it is ancestral property.

(ii) They owned land in village Talwandi Rai, which was not purchased by Arjan Singh.

(iii) Arjan Singh had no house at village Talwandi Rai.

(iv) 13 killas of land at village Burhmi was given to them (3 sons of Arjan Singh) in equal shares by way of mutation in a partition. He is living in his own house and has his vote and ration card at that address. His brothers also have separate ration cards and are enlisted as voters in separate houses.

32. Plaintiff Hardial Singh while appearing as PW5 after the remand of the case has resiled from his earlier statement that they were given land by their father in partition and stated that no land was given to him and his brothers by way of partition.

33. It is evident from perusal of above oral statements of plaintiff and his witnesses that land owned by Arjun Singh in village Burhmi was purchased by him while as per jamabandi for the year 1944-45 (Ex.D3), land of village Talwandi Rai was purchased by Arjan Singh, as such, land of both villages was self-acquired property of Arjan Singh.

Oral evidence led by defendants(appellants)

34. Joginder Singh son of Surjan Singh DW3 has stated that Arjan

Singh was living separate from his sons and his sons were also living separate. Arjan Singh had income only from the agriculture land and from that income he had purchased land. DW4 Nahar Singh has stated that Arjan Singh was living with Harnam Singh, who had performed his last rites. Sons of Arjan Singh were working with him and he had purchased land from agriculture income. He has also stated that father of Arjan Singh was having 25 bighas of land and Arjan Singh was his only son.

35. DW6 Harnam Singh defendant has stated that Arjan Singh had given land to him and his other brothers during his life time. He has stated that six killas of land given to each of his sons by Arjan Singh, was ancestral land. He had given 11 killas of his land to his sons, retaining 6-7 killas with him. Harmel Singh (appellant) appeared as DW7 and reiterated his case.

Discussion

36. Perusal of above evidence shows that there is no evidence on record that Arjan Singh had inherited any land from his father, grand father or great grand father. Even witness of plaintiff PW1 Bakhtawar Singh has stated that Arjan Singh had not been allotted any land in lieu of land left by him in Pakistan. Jamabandi for the year 1944-45 (Ex.D3) shows that land of village Talwandi Rai was purchased by Arjan Singh. Jamabandi for the year 1955-56 shows that land as exclusively owned by Arjan Singh. In the absence of any documentary evidence or even the statement of any of the witnesses examined by the plaintiff or of plaintiff himself, that land in dispute was ever owned by their ancestors and was inherited by Arjan Singh from his predecessors, the question which arises for consideration is

whether the suit land can be held to be joint Hindu family coparcenary property. The answer to this is emphatic 'No'. Even both the Courts below have not referred to any document while holding the suit land to be joint Hindu family coparcenary property. The first Appellate Court while reaching the conclusion that the suit property was joint Hindu family coparcenary property of Arjan Singh has observed in para 15 of the judgment as follows:-

“15. In the case under consideration, it is admitted by Harmel Singh, defendant No.3(DW-7) that the land of village Burhmi was the ancestral land of Arjan Singh. On the same lines is the statement of Harnam Sing, DW-6. The controversy in relation to that part of the land stands settled.”

37. The above observation is contrary to the evidence on record and particularly testimony of plaintiff and his witnesses, as discussed above.

38. The factum of plaintiff constituting a coparcenary or joint family with his father Arjan Singh was a question of fact require to be proved by cogent evidence. The Courts below have relied on the pleadings of the earlier suit filed by appellants Harmel Singh and Jagrup Singh, wherein they alleged that the suit property was joint Hindu family coparcenary property in which they had interest from their birth and the same had been given to them in family settlement by Arjan Singh.

39. A question which arises for consideration is as to whether in the presence of clear, unassailable evidence to the contrary that suit property is not joint Hindu family coparcenary property in the hands of Arjan Singh, merely on the basis of above averments, it can be held as joint Hindu family coparcenary property. Apparently wrong or inadvertent pleadings can

never lead to recording a wrong conclusion by applying the principle of '*Approbation and Reprobation*'. It is clear from the evidence on record that the suit property is not proved to be ever owned by predecessors-in-interest of Arjan Singh. Mere fact that Harmel Singh and Jagrup Singh have pleaded the same to be joint Hindu family coparcenary property in earlier suit, cannot lead the Court of law to hold the same to be joint Hindu family coparcenary property.

40. It is proved on file that Arjan Singh was living with his son Harnam Singh. Harmel Singh and Jagrup Singh were grand sons of Arjan Singh. Arjan Singh had given land to his sons vide mutation No.3405 dated 26.12.1954. The other sons of Arjan Singh were living separate. He had been maintaining jointness of his property with his son Harnam Singh and with his grand sons. It was his option to keep his property joint with that of his son Harnam Singh and this may be the reason for appellants to allege the suit property as joint Hindu family coparcenary property. The question which arises here for consideration is as to whether this can be taken as proof of nature of suit land as joint Hindu family coparcenary property. The aspect to be examined here is as to whether appellants have misguided the Court or taken any undue benefit of these pleadings. As proved on file, Arjan Singh was living with his son Harnam Singh and grand sons Harmel Singh and Jagrup Singh. Being sole and exclusive owner of the suit property, Arjan Singh could give the suit property to his grand sons (appellants) by way of family settlement, as such, the Courts recognising the title of appellants vide decree sheet dated 18.11.1980 (Ex.P1) is not the result of any fraud or misrepresentation to the extent that the decree dated

18.11.1980 be declared as null and void.

41. Firstly, '*Coparcenary*' is to be proved by leading cogent evidence and in the absence of any joint Hindu family, there is no question of suit land being coparcenary or ancestral property. In case of ***Munsha Singh Vs. Uttam Singh and others A.I.R. 1922 Lahore 65***, it was held as follows:-

“It seems to be now settled law that in a case such as this the party asserting that certain land is ancestral is required to prove his assertion and conjectures cannot be accepted as a substitute for proof.”

42. This Court in case of ***Mehar Singh (deceased) and others Vs. Baltej Singh and another (2006-1) Punjab Law Reporter 161***, has observed as follows:-

“18. With regard to the fact as to whether the plaintiff had constituted a Joint Hindu Family or a coparcenary with his father Jarnail Singh, it is apparent from the entire evidence led by him that no effort had been made by the plaintiff at all to prove the aforesaid fact. On the basis of mere bald plea taken by the plaintiff in that regard, no inference could be drawn without there being any supportive evidence. The factum of the plaintiff having constituted a coparcenary or a Joint Hindu Family with his father Jarnail Singh was a question of fact. The same was required to be proved by leading dogent evidence. The learned first appellate Court has completely fallen into error when it returned finding in favour of the plaintiff on the aforesaid fact. Apparently, the aforesaid finding has been recorded by the learned first appellate Court without there being any material available on the record. Thus, the aforesaid finding of fact is apparently vitiated and not legally sustainable and can be held as judicially perverse.

19. At this stage, it may also be noticed that the learned first appellate court had placed reliance upon jamabandi Ex.P9 to

hold that since the property in question had originally belonged to Jiwan Singh and on his death had developed upon his sons Jarnail Singh, Chanan Singh, Gurdial Singh and Bhag Singh, thereofre, Jarnail Singh having 1/4th share, the property would be deemed to be Joint Hindu Family property. Again the learned first appellate court had returned the aforesaid finding without any basis whatsoever.”

43. A co-ordinate Bench of this Court in case of ***Matu Ram (deceased) through LRs Vs. Kartar Singh and others 2004(2) PLR 569*** has observed as follows:-

“It is too well settled that even an admission of a party may not be enough to hold the property to be ancestral or co-parcenary as, to prove the nature of the property, the Court goes only by evidence that may come on the records of the case.”

44. Similar view was also taken by this Court in case ***Harbans Kaur Vs. Tej Kaur 2015(3) Law Herald 2216***.

45. The case of the plaintiff can be examined from yet another angle, believing that the entire land including the suit land recorded in the revenue record as ownership of Arjan Singh was joint Hindu family coparcenary property. Both the Courts below have ignored the fact that vide mutation No.3405 dated 26.12.1954 Arjan Singh had given separate chunk of land to his three sons and had retained some land of village Burhmi and land of village Talwandi Rai with him. Once it is established that there was severance of status amongst members of joint Hindu family and there was separation of interest in the immovable property between the father and sons and by virtue of family settlement, a particular lot of property had gone to share of sons, the very concept of joint Hindu family ceases. In this case, vide mutation No.3405 dated 26.12.1954 (Ex.D11) Arjan Singh by way of family settlement transferred land in the name of his sons and they have been living separately as admitted by the plaintiff and his witnesses and in

these circumstances, it cannot be concluded that suit land still remained joint amongst Arjan Singh and his sons and he was not competent to suffer a consent decree dated 18.11.1980. The conclusion so arrived by both the Courts below is not only wrong but perverse, against facts proved on record and thus unsustainable.

46. Much stress has been laid on the fact that the witnesses have stated that the land was purchased by Arjan Singh from his agricultural income and as such, the same is also joint Hindu family coparcenary property.

47. The above conclusion drawn by both the Courts below have no basis as firstly, there is no evidence that any land was inherited by Arjan Singh from his ancestors; secondly, the plaintiff has not produced any evidence to show as to how and when Arjan Singh became owner of land situated in village Burhmi or whether he owned this land prior to purchase of land at village Talwandi Rai; thirdly, statement of Harnam Singh DW6 that the land of village Burhmi given to them was ancestral, in the absence of any documentary evidence on record carries no weight particularly when witnesses examined by plaintiff have stated the same was purchased by Arjan Singh. The statement of DW4 Nahar Singh that father of Arjan Singh was owning 25 bighas of land, in the absence of any documentary evidence, cannot be relied to draw the conclusion that this 25 bighas devolved upon Arjan Singh by way of natural succession. Neither plaintiff nor any of his witness have stated that any land owned by father of Arjan Singh devolved upon him. Any conclusion based on the above statement, will be vague, perverse and ultimately result in travesty of law.

48. To sum up, it is evidently clear from the evidence on record that plaintiff Hardial Singh failed to discharge the onus heavily placed on him to prove that the suit land was joint Hindu family coparcenary property in the hands of Arjan Singh. It is also proved that there was no jointness of agriculture, residence or mess between Arjan Singh and plaintiff who were living separate; even if, there was any jointness of residence or property that got severed vide mutation No.3405 of 26.12.1954. The appellants are the grand sons of Arjan Singh, who had devolved his self-acquired property on them vide consent decree dated 18.11.1980, as such, mere mention in the plaint by appellants that the suit property was joint Hindu family coparcenary property, in no manner, proves that it was a joint Hindu family coparcenary property of Arjun Singh. Plaintiff Hardial Singh was required to prove that suit land was joint Hindu family coparcenary property by leading cogent and convincing evidence, which he has failed to produce, rather the evidence on record proves the suit land to be self acquired property of Arjan Singh.

49. In view of my above discussion, substantial questions of law as framed in this appeal are answered in favour of appellants and against respondent No.1.

50. Consequently, this appeal has merits and the same is accepted. Judgment and decree of Courts below is set aside and the suit of plaintiff Hardial Singh is dismissed with costs throughout.

January 15, 2016.
deepak/Sachin M.

(SURINDER GUPTA)
JUDGE