

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**1. RSA No. 3699 of 2006 (O&M)**  
**Date of Decision : 03.10.2016**

Santokh Singh ....Appellant

Versus

Gurmit Singh and others ....Respondents

**2. RSA No. 3700 of 2006 (O&M)**

Santokh Singh ....Appellant

Versus

Gurmit Singh and others ....Respondent

**CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Munish Gupta, Advocate  
for the appellant.

Mr.Sanjay Majithia, Senior Advocate with  
Mr. Inderjeet Singh, Advocate  
for the respondents.

**Surinder Gupta, J.**

Both the appeals captioned above have been taken up together as the matter in issue in both the appeals is similar.

2. Santokh Singh son of Ujjagar Singh filed suit seeking declaration that suit land in both the suits situated in village Adamwal, *tehsil* and District Hoshiarpur is joint Hindu family coparcenary property of plaintiff and defendants no. 1 to 7 of which his father Ujjagar Singh (since deceased) was *karta* and sale deed dated 15.11.1994 with respect to 7 *kanals* of land executed by Ujjagar Singh in favour of defendant no. 12-Sukhjit Kaur, daughter of Ujjagar Singh is illegal, null, void, without consideration and without any legal and valid necessity.

3. The land measuring 110 *kanals* 18 *marlas* being 1/4<sup>th</sup> share of

land measuring 443 *kanals* 12 *marlas* was subject matter of Civil Suit No. 366 of 1995/2000 and 631/2524 share in 31 *kanals* 11 *marlas*; 1/4<sup>th</sup> share in land measuring 97 *kanals* 2 *marlas*; 56 *kanals* 17 *marlas*, 39 *kanals* 18 *marlas*, 197 *kanals* 11 *marlas*; 2943/11772 share in land measuring 3 *kanals* 11 *marlas* and a house situated in village Adamwal were the subject matter of Civil Suit No. 566 dated 08.10.1998.

4. Two issues crop up for consideration in the suits filed by plaintiff, which were disposed of by common judgment dated 08.11.2002 by Civil Judge (Junior Division), Hoshiarpur. Firstly that suit land is joint Hindu family coparcenary property and secondly, the suit land as fully described in headnote of the plaint was allotted to Inder Singh in lieu of his land left in Pakistan. Both the points were decided against the appellant.

5. First contention of learned counsel for the appellant is that suit land is joint Hindu family coparcenary property. He has argued that this land was allotted to Inder Singh in lieu of the land left by him in Pakistan. For this purpose, he has referred to affidavits (Ex. P-1 and Ex. P-2) wherein Ujjagar Singh and Avtar Singh sons of Inder Singh stated before Rehabilitation Authorities that Inder Singh was having 50 acres of land in Chak No. 5, P.O. Mandi Chishtian, District Bahawalpur, Pakistan in lieu of which they have been allotted 28-3 ½ standard acre.

6. Learned counsel for the appellant has fairly conceded few facts, which are enumerated as follows:-

- (i) The total suit land as described in Civil Suit No. 366 of 1995/2000 is 443 *kanals* 12 *marlas* out of which plaintiff-appellant has described share of Ujjagar Singh, his father, as 110 *kanals* 18 *marlas*.
- (ii) The land described in Civil Suit No. 566 of 08.10.1998 is 440 *kanals* 1 *marla* plus a house.

- (iii) As per allotment letter (Ex. P-4) in the name of Inder Singh, the total land allotted to him is 216 *kanals* 19 *marlas*.

7. Plaintiff could not make out that after consolidation *khasra* number of suit land mentioned in both the cases were allotted in lieu of the land of Inder Singh. Though, some of the *khasra* numbers could talley but entire land is not proved to have been allotted in lieu of the land allotted to Inder Singh. It is not required to go into the this controversy regarding allotment of land after consolidation as plaintiff/appellant failed to prove on file that entire suit land is joint Hindu family coparcenary property in the hands of Ujjagar Singh son of Inder Singh.

8. The plea raised by learned counsel for the appellant and his reference to evidence recorded in both the cases, if accepted, is sufficient to support the conclusion drawn by Courts below that suit property is not proved to be joint Hindu family coparcenary property. Plaintiff is in third generation from Inder Singh. In order to prove that suit land was joint Hindu family coparcenary property inherited by four sons of Inder Singh, he was required to prove by leading cogent and convincing evidence that entire suit land was allotted in consolidation proceedings in lieu of land which Inder Singh got in lieu of his land in Pakistan. It is no more *res integra* that if part of suit land is joint Hindu family coparcenary property and merged with self acquired property of parties to the extent that it cannot be separated, whole land is to be treated as self acquired property in the hands of recorded owners. Reference in this regard can be made to observations of Apex Court in case of **Mara and others vs. Mst. Nikko @ Punjab Kaur and another, 1964 AIR (SC) 1821**, wherein it was observed in para 7 of the judgment as

follows:-

“7. Now, it has been ruled in the Punjab consistently that where lands are so mixed up that the ancestral and non-ancestral portions cannot be separated they must be regarded as non-ancestral, unless it is shown which are ancestral and which are not. This was laid down by the Privy Council in **Avtar Singh vs. Thakar Singh, 35 Ind App. 206 (PC)**. It was held by Mr. Justice Kapur (as he then was) in **Indar Singh vs. Gulzara Singh and others, AIR 1951 Punjab 345** basing himself upon **Saif-ul-Rahman vs. Mohammand Ali Khan, ILR 9 Lahore 95** and **Jagtar Singh v. Raghbir Singh, ILR 13 Lahore 165** that land ceases to be ancestral if it comes into the hands of an owner otherwise than by descent. Once these conclusions are reached, it is quite obvious that the decision of the District Judge not to apply the answer to question No. 52 to non-ancestral land was right. It may be mentioned that the answers to questions refer to ancestral property only and this is now firmly established. In fact, it was not denied at the hearing.”

9. When Inder Singh has been allotted only 216 *kanals* 19 *marlas* of land as per allotment letter (Ex. P-4), the entire land owned by him, which is subject matter of suit, could not be treated as ancestral land. Ancestral and non-ancestral land when got mixed up and cannot be separated, will be treated as self acquired land of Ujjagar Singh and his brothers.

10. Learned counsel for the appellant fairly conceded during course

of arguments that he is not in a position to make out that entire suit land was allotted in lieu of land allotted to Inder Singh vide letter (Ex. P-4) or to separately identify  *khasra*  numbers which were allotted in lieu of land allotted to Inder Singh before consolidation. In the absence of pleadings to above effect or evidence on record, learned counsel for the appellant could not make out that observation of Courts below that suit property is not proved to be joint Hindu family coparcenary property, is perverse against law, fact and evidence on record.

11. In view of my above discussion, appeals filed by plaintiff have no merits. No substantial question of law requiring determination arises in these appeal.

Dismissed.

**October 03, 2016**  
jk

**( SURINDER GUPTA )**  
**JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No