

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.390 of 2010 (O&M)

Date of Decision: March 17, 2016

Gurcharan Singh Gill

...Appellant

Versus

Smt.Baljinder Kaur @ Barjinder Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Kanwaljit Singh, Senior Advocate with
Ms.Jaswinder Kaur, Advocate,
for the appellant.

Mr.K.R.Dhawan, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts, whereby the suit instituted by him has been dismissed.

The appellant-plaintiff instituted a suit for declaration seeking transfer of land of Kapur Singh. The description of the land, situated in Village Markhai, Tehsil Zira, District Ferozepur has been given in Para (a) of the head note, whereas description of the land situated in Village Sekhwan, Tehsil Zira, District Ferozepur has been mentioned in Paras (b) to (e) of the head note of the plaint and consequential relief of possession challenging the judgment and decree dated 14.3.1985 as referred to in prayer clause (II) of the head note of the plaint. Both the Courts below have

dismissed the suit.

Mr.Kanwaljit Singh, learned Senior Counsel assisted by Ms.Jaswinder Kaur, appearing on behalf of the appellant-plaintiff submits that predecessor-in-interest of the plaintiff, namely, Kishan Singh, great grand-father of the plaintiff, was the owner of property situated in Village Oorkee Abdulashah, Tehsil and District Bahawalpur (Pakistan), which fact has been proved through jamabandi (Ex.P1), mutation (Ex.P2) and jamabandi (Ex.P4). After the partition, Kapur Singh was allotted land measuring 110 acres vide letter of allotment dated 10.10.1958 in lieu of the land left in Village Oorkee Abdulashah, which fact is proved through document (Ex.P45) at page 625 of the record of the trial Court. The aforementioned documents would reveal that the property was ancestral in nature as the plaintiff being 4th generation in lineage, however, both the Courts below declined the relief as sought in the suit on the ground that the property left in Pakistan, as shown in the revenue record and Parchi allotment, is not connected and, therefore, it cannot be deduced that it had fallen to the share of grand father Kapur Singh son of Kishan Singh and then to his father Gurjant Singh.

Mr.K.R.Dhawan, learned counsel appearing on behalf of the respondents submits that the area of the property in Pakistan was much more. Khasra numbers are not mentioned in the jamabandies, much less mutation (Ex.P2) to connect the allotment of land measuring 110 acres in Village Sekhwan, Tehsil Zira, District Ferozepur and, thus, it cannot be ancestral in nature. The property exchanged hands as Kapur Singh had suffered a consent decree dated 9.11.1978 regarding land measuring 88 kanals 13 marlas, whereas other property had been sold through sale deeds,

whereas the suit had been filed in 1994, which is *ex-facie*, barred by law of limitation, whereas property at the hands of Kapur Singh was not ancestral, therefore, the suit was not maintainable and rightly so, has been dismissed. There is no illegality and perversity in the judgments and decrees under challenge.

In rebuttal, Mr.Kanwaljit Singh submits that the property situated in Village Markhai succeeded by Kishan Singh. As regards the property measuring 88 kanals 13 marlas, Kishan Singh was mortgagee vide registered mortgage deed dated 14.9.1903. As per judgment and decree of 1966, Kapur Singh was declared as owner as the suit was filed against the mortgagors. Kapur Singh suffered a judgment and decree in 1978 in favour of his daughter-in-law. Even the said property is also ancestral.

On the other hand, Mr.Dhawan submits that the property at the hands of Kapur Singh would not assume the character and nature of ancestral as his stake in the property was of a mortgagee. It is only Kapur Singh, who sought the declaration and, therefore, the plaintiff being 3rd generation in lineage cannot have a right and, thus, prays for dismissal of the appeal.

After hearing the learned counsel for the parties, appraising the paper book and on perusal of the record of the Courts below, I formulate the following substantial questions of law for the adjudication of the present lis between the parties:-

- 1) Whether the property at the hands of Kishan Singh, situated in Village Sekhwan, Tehsil Zira, District Ferozepur, which has been allotted in lieu of the land left in Village Oorkee Abdulashah in Pakistan, would be ancestral or not?
- 2) Whether the judgments and decrees of both the Courts below in declining the relief of declaration suffer from

illegality and perversity?

3) Whether all the mortgagee rights in favour of Kishan Singh converted into ownership by Kapur Singh vide judgment and decree of 1966 would be ancestral at the hands of the plaintiff or not?

Substantial question Nos.1 and 2, in my view, are liable to be answered in favour of the appellant-plaintiff and question No.3 against him and in favour of the respondent-defendants in the following manner:-

As per the documents/revenue record, Ex.P1, Ex.P2, Ex.P3 and Ex.P4, it is evident that Kishan Singh was holding land in Village Oorkee Abdulashah in Pakistan. On his demise, it was mutated in the name of his two sons, namely, Surmukh Singh and Kapur Singh in equal shares. This fact is evident from mutation (Ex.P2). Upon partition, Kapur Singh son of Kishan Singh was allotted land measuring 110 acres by Parchi allotment vide letter of allotment dated 10.10.1958, wherein it has been mentioned that the land situated in Village Sekhwan has been allotted in lieu of the land left in Village Oorkee Abdulashah. The aforementioned facts have not been noticed by both the Courts below, but erroneously held that mutation (Ex.P2) did not bear any khasra numbers, much less not connected with the suit property with the property owned by deceased Kapur Singh in Pakistan. Vis-a-vis jamabandi (Ex.P3), no reasoning has been assigned except by holding that the documents are not sufficient, whereas on going through the documents (Ex.P3 and Ex.P4), it is found that khasra numbers are specifically mentioned.

In view of Para 221, 21st Edition of 2010 of Hindu Mullah Law, it is settled law that the person would have a right to claim the nature of the property being coparcenary and ancestral in his hands in case he is able to

prove that it has fallen from 3rd generation he being the 4th generation in lineage. Kishan Singh, great grand-father of the plaintiff, was survived by his two sons, Surmukh Singh and Kapur Singh and Kapur Singh has one son, namely, Gurjant Singh.

In view of the aforementioned facts and circumstances, the finding rendered by the Lower Appellate Court that the property situated at Village Sekhwan at the hands of Kapur Singh was not ancestral is not correct and is hereby set-aside and, therefore, all the consequential transfers and decrees would have no affect being null and void and, thus, the judgments and decrees of both the Courts below are hereby set-aside and the suit of the appellant-plaintiff to this extent is decreed.

As regards the property situated in Village Markhai, Tehsil Zira, District Ferozepur is concerned, I am of the view that the plaintiff has miserably failed to prove the nature of the property being ancestral as Kapur Singh acquired right in the land for the first time by virtue of decree suffered in 1966 as Kishan Singh was only the mortgagee. By consent decree of 1978, Kapur Singh transferred the right and title in favour of his daughter-in-law. The said property, in my view, cannot be said to be ancestral in nature as it had not fallen from 4th generation in other words not 4th generation, thus, the suit vis-a-vis the aforementioned land/property situated in Village Markhai, Tehsil Zira, District Ferozepur measuring 88 kanals 13 marlas is hereby dismissed.

Accordingly, the suit is partly decreed and the appeal is also partly allowed.

March 17, 2016
ramesh

(AMIT RAWAL)
JUDGE