

In the High Court of Punjab and Haryana at Chandigarh

**RSA No.1658 of 2011(O&M)
Date of Decision: 20.1.2016**

Surat Singh and others

---Appellants

versus

Mahabir Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. P.R.Yadav, Advocate
for the appellants
Mr. Sanjay Vij, Advocate
for the respondent

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

Rekha Mittal, J.

The present regular second appeal has been directed against the judgment and decree dated 24.12.2010 passed by the Additional District Judge, Gurgaon, reversing the judgment and decree passed by the learned trial court whereby the suit filed by the respondent/plaintiff for declaration was dismissed.

Capt. Mahabir Singh (retired) son of late Sh. Mawasi Ram filed a suit for declaration in respect of the suit land, detailed in para 2 of the judgment of the learned trial court on the premise that Mawasi Ram father of the parties was the erstwhile owner in possession of the land in dispute. Mawasi Ram was earlier married with Gindori Devi and the

respondent was born out of that wedlock. After the death of Gindori Devi, Mawasi Ram contacted second marriage with Bugli Devi. Out of the said wedlock, three sons and four daughters (appellants) were born. Mawasi Ram passed away on 12.12.2002 leaving behind the respondent, appellants and Bugli Devi his widow. The land in dispute is ancestral in the hands of Mawasi Ram as some land was inherited by him from his father and some was purchased with income from the said land. Mawasi Ram had no source of income except agriculture. The respondent claimed $5/27^{\text{th}}$ share in the land in dispute i.e. $1/6^{\text{th}}$ share of his own and $1/54^{\text{th}}$ share out of the share of Mawasi Ram. Bugli Devi expired on 13.1.2004 and her $5/27^{\text{th}}$ share was inherited by the appellants. The respondent was recorded to be owner of the suit land to the extent of $1/9^{\text{th}}$ share which is less than his share.

Appellants No. 1 to 3 filed the written statement contesting the claim of the respondent. It is averred that they had been earning since long and contributed in the income of late Mawasi Ram with which he purchased several properties. The respondent never contributed for purchasing any property in the name of *karta*. It has also been pleaded that agricultural custom was prevailing amongst the agriculturists of district Gurgaon which provided equal share to the daughters in the property of their father. As per the amendment in the Hindu Succession Act, 1956 (in short "the 1956 Act"), the daughters have been declared as coparceners. It has been further averred that a civil suit for declaration on the same subject matter was filed by the respondent which was dismissed in default under

Order IX Rule 3 of the Code of Civil Procedure (in short “CPC”) on 28.9.2006.

The respondent filed replication re-asserting his stand taken up in the plaint and controverted the allegations raised in the written statement.

The controversy between the parties led to framing of following issues:-

1. Whether land in suit was ancestral in the hands of Mawasi Ram, if so its effect?OPP
2. To what share plaintiff is entitled under Order II Rule 2 CPC? OPP
3. Whether suit is barred under Order 2 Rule 2 CPC?OPD
4. Whether at the time of death of Mawasi Ram on 12.12.2002 the agricultural custom will be applicable regarding devolution of property, instead of Section 6 of the Hindu Succession Act?OPD
5. Whether suit is not maintainable in the present form?OPD
6. Whether the suit is time barred?OPD
7. Whether plaintiff is estopped from filing the present suit?OPD
8. Whether the plaintiff is entitled to a decree for declaration to the effect that he is owner of 5/27th share in the suit land detailed in Para No. 1 of the plaint?OPD
9. Relief

The learned trial court returned findings on issues No. 1, 2, 4 and 8 jointly against the respondent/plaintiff whereas the remaining issues

were answered against the appellants and as a result, the suit of the respondent was ordered to be dismissed with costs.

The judgment and decree passed by the learned trial court became subject matter of challenge in the appeal preferred by the respondent. The appellate court accepted the appeal of the respondent, reversed the findings of the trial court on issues No. 1, 2, 4 and 8 and held that suit land was joint Hindu family property of the respondent and appellants and Mawasi Ram was holding the same as a *karta* and the respondent is entitled to $\frac{5}{27}$ th share in the suit property i.e. $\frac{1}{6}$ th share at the time of partition which took place during life time of Mawasi Ram and another $\frac{1}{54}$ th share after death of Mawasi Ram and in all, he is entitled to $\frac{5}{27}$ th share in the suit land.

Feeling dissatisfied with the verdict of the first appellate court, the present appeal has been preferred by the appellants/defendants.

Learned counsel for the appellants has submitted that there is no material on record to support findings of the appellate court that either the suit property was ancestral property in the hands of Mawasi Ram or the same was joint Hindu family much less coparcenary property. It is further argued that as the respondent has failed to establish his claim in regard to the suit property being ancestral or coparcenary, the appellate court has wrongly held the respondent to be entitled to $\frac{1}{6}$ th share by way of notional partition during life time of Mawasi Ram and $\frac{1}{54}$ th share out of $\frac{1}{6}$ th share of Mawasi Ram who admittedly left behind nine class-I heirs i.e. four sons (appellants No. 1 to 3 and the respondent), four daughters (appellants No. 4 to 7) and Bugli Devi, his widow who passed away in the year 2004 after the

death of Mawasi Ram on 12.12.2002. According to the learned counsel, if the suit property is to be treated as self acquired property of Mawasi Ram, the respondent is entitled to 1/9th share in view of the provisions of the 1956 Act as Mawasi Ram concededly left behind aforesaid nine class-I heirs.

Counsel for the respondent is not in a position to support the findings recorded by the appellate court that the suit land was joint Hindu family coparcenary property of appellants No. 1 to 3, the respondent and Mawasi Ram holding the same as a *karta* of the said joint Hindu family. However, counsel has made a vain attempt to argue that in the release deed executed by appellants No. 4 to 7 in favour of appellants No. 1 to 3 on 1.5.2009 (Ex. D8), the suit land has been described as the ancestral property, therefore, the appellants cannot escape from the clear admission made in the release deed (Ex. D8). It has further been argued that no fault can be found with the well reasoned judgment passed by the first appellate court holding in favour of the respondent that he is entitled to 5/27th share in the suit property.

I have heard counsel for the parties and perused the records.

The substantial question of law which arises for consideration is “*Whether respondent/plaintiff has been successful in establishing that the suit property is either ancestral property or joint Hindu family property or coparcenary property?*”

A perusal of the revenue record in the form of jamabandis exhibited during course of evidence would make it evident that in none of these documents, the suit land is shown to be inherited by Mawasi Ram

from his father much less same being inherited from father, father's father and father's father's father. In this view of the matter, jamabandis produced on record do not support the contention of the respondent that the suit land is either ancestral or the same is coparcenary property. As a matter of fact, there is no material on record to affirm the findings of the appellate court that the suit land is the joint Hindu family coparcenary property for the purpose of dividing it into six shares on the basis of notional partition and thereafter entitling the respondent to get 1/9th share out of land which had fallen to the share of Mawasi Ram to the extent of 1/6th share.

To be fair to the respondent, counsel for the respondent has tried to draw some mileage from a recital in the release deed (Ex. D8) executed by appellants No. 4 to 7 in favour of appellants No. 1 to 3. Counsel for the respondent has fairly conceded that had there been no recital in regard to the suit property being ancestral, the executants of the release deed were required to pay stamp duty at a rate higher than paid now. Under these circumstances, the mere recital in the release deed that the suit land is ancestral is not sufficient to support plea of the respondent or the findings of the learned appellate court that the suit land is joint Hindu family property of which Mawasi Ram was the *karta*. I would hasten to add that the parties might have described the land, subject matter of release deed as ancestral property for the reason that as the land has been inherited by them from their father Mawasi Ram, the same is ancestral qua them. In this view of the matter, the respondent cannot derive any advantage to his contentions from the release deed Ex. D8.

This brings the Court to the next question as to what would be

the share of the appellants and the respondent in the land in question by taking the suit land to be self acquired property of Mawasi Ram. There is no dispute between the parties that Mawasi Ram left behind nine class -I heirs in view of the provisions of the 1956 Act. The estate left behind by Mawasi Ram was inherited by each one of the class-I heirs to the extent of $1/9^{\text{th}}$ share. In this manner, the respondent became owner in the suit land to the extent of $1/9^{\text{th}}$ share only. The $1/9^{\text{th}}$ share which was inherited by Bugli Devi widow of Mawasi Ram would be inherited by the appellants to the extent of $1/7^{\text{th}}$ share each as the respondent would not be entitled to inherit to Bugli Devi being her step son in the presence of sons and daughters (appellants) left behind by Bugli Devi. Appellants No. 4 to 7 executed a release deed in favour of appellants No. 1 to 3 relinquishing their rights in the suit land in their favour in equal share. In this manner, appellants No. 1 to 3 have become entitled to $8/27^{\text{th}}$ share each in the suit land. With these observations, the aforesaid question of law is answered in favour of the appellants and against the respondent. The judgment and decree passed by the appellate court is modified in the aforesaid terms that the respondent shall be entitled to $1/9^{\text{th}}$ share in the suit land instead of $5/27^{\text{th}}$ share, as has been held by the court in appeal.

In view of what has been discussed hereinabove, the appeal is disposed of in the aforesaid terms leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

20.1.2016

PARAMJIT