

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.1711 of 2016 (O&M)
Date of Decision: July 28, 2016.**

Kulwant Singh

.....APPELLANT(s).

VERSUS

Vijay and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashish Gupta, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Appellant-plaintiff Kulwant Singh claimed share in the suit property with the plea that it is joint Hindu family coparcenary property and being a coparcener, he owns 1/5th share in it.

2. The Courts below discarded the claim of the appellant-plaintiff. Learned Civil Judge (Senior Divison), Jhajjar held the suit land to be ancestral and coparcenary property in the hands of defendant No.4-Hukam Singh, father of plaintiff in his capacity as *Karta* and registered relinquish deed dated 21.10.2005 executed by him in favour of defendants No.1 to 3 was held to be for better management of ancestral property and for the benefit of the estate. Plaintiff filed appeal, which was dismissed by learned Additional District Judge, Jhajjar.

3. Regarding ancestral nature of suit land, learned Additional District Judge observed in para 12 as follows:-

“12. In order to prove the nature of property as ancestral, plaintiff Kulwant Singh was bound to prove the fact

that the property in the hands of his father Hukum Singh S/o Subha Chand, S/o Ramji Lal, S/o Dani, was acquired from Hukum's grand father, and the said property descended from the common ancestor, by inheritance and by no other means; as held by Hon'ble P & H High Court in case Mst. Sham Kaur Vs. Hari Singh, 1971 Current Law Journal 702. Plaintiff failed to prove the fact, as to how the said agricultural land came in the hands of Subha Chand from his father Ramjilal, and then to Hukum Singh, i.e. whether by way of inheritance, or gift, or Will, or any other mode. Plaintiff only produced the revenue record showing the land in the name of Ramjilal, S/o Dani, as apparent from Jamabandi for the year 1909-10, 1915-16, 1917-18, 1921-22 Ex.P50/T, but these jamabandies also shows land entered in favour of widow Mst. Mathri w/o Chhano. Jamabandi for the year 1925-26 shows land in favour of Sabha Chand & Goverdhan, S/o Ramjilal. In absense of mutation nature of transfer cannot be ascertained. Further, the fact that females were also inheriting the said land along with male members, as reflected in Ex.P50/T, Ex.P-8, Ex.P-18 to 22 etc., it negates the nature of suit land as ancestral to be governed by Hindu Mitakshra Law. Thus, I am of the considered view that plaintiff miserably failed to prove the nature of the suit property, as ancestral or coparcenary in any manner. Therefore, plaintiff has no right or locus standi to sue on this ground. Moreover, apart from the above properties, Mutation no. 812 dated 13.03.1954, (un-exhibited document) shows purchase of 9 Bigha- 6Biswa land was purchased by Sabha Chand from Rao Bahadur etc.”

4. Learned counsel for the appellant has argued that learned Civil Judge (Senior Division) has held the suit land as joint Hindu family coparcenary property, as such, Hukum Singh, defendant No.4 being *Karta* of the family, was not competent to transfer any share in favour of defendants No.1 to 3. The Courts below have discarded the claim of plaintiff on the ground that 22 kanals 15 marlas of land was given to the

plaintiff by purchasing the same in his name. This purchase was made from the joint funds of the family in the year 1976. The plaintiff is willing to give his 22 kanals of land to joint pool and then have 1/5th share in the suit land and seeks setting aside of the judgment and decree passed by the Courts below.

5. On giving a careful thought the submissions of learned counsel for the appellant, I find no merits in the same. This fact is proved that land measuring 22 kanals 15 marlas was purchased in the name of plaintiff by his father from his income. The plaintiff failed to prove that the suit land was joint Hindu family coparcenary property in the hands of Hukam Singh. The observations made by learned Civil Judge (Senior Division), Jhajjar that suit land is joint Hindu coparcenary property are perverse and against facts on record. Though learned Civil Judge has stressed that Hukam Singh, father of plaintiff, inherited the suit land from his father but no finding was recorded that father of Hukam Singh had also inherited the suit land from his father. The findings recorded by learned First Appellate Court in para 12 referred above, clearly show that the suit land was not joint Hindu family coparcenary property. Consequently, plaintiff has no interest in the suit land or could claim any share therein.

6. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

July 28, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No