

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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C.M. Nos. 6301-6304-C of 2016 and
RSA No. 2378 of 2016 (O&M)

Date of decision: May 12, 2016

Amritpal Singh

...APPELLANT

Versus

Darshan Singh (deceased) through his legal heirs and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Ekta Thakur, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 6301-C of 2016

Prayer in this application is for condonation of delay of 26 days
in re-filing the appeal.

For the reasons mentioned in the application, which is duly
supported by the affidavit of the counsel, the present application is allowed.
Delay of 26 days in re-filing the appeal stands condoned.

C.M. No. 6302-C of 2016

Prayer in this application is for bringing on record the legal
heirs of respondent No. 1-Darshan Singh, who is stated to have died during
the pendency of the appeal before the Lower Appellate Court but
inadvertently, his legal heirs were not brought on record. The details of the
legal heirs are mentioned in para-2 of the application. The application is
supported by the affidavit of Nishan Singh son of Sarwan Singh, who is the

special power of attorney of the appellant-Amritpal Singh.

In view of the above, the present application is allowed. The legal heirs of respondent No. 1-Darshan Singh, as detailed in para-2 of the application, are brought on record subject to just exceptions and for the purpose of the present litigation alone.

C.M. No. 6304-C of 2016

C.M. is allowed subject to just exceptions. Filing of certified copies of Annexures P-1 and P-2 and judgment dated 09.07.2014 is dispensed with.

RSA No. 2378 of 2016

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division) Dasuya dated 09.07.2014, whereby the suit for declaration to the effect that the land measuring 49 Kanals 7 Marlas, as detailed in the headnote of the suit, is a Joint Hindu Family Co-parcenary Ancestral Property of the plaintiff and the defendants and that the plaintiff is owner of 8 Kanal and 4 Marlas of land being 1/6th share of the total land situated in Village Usman Shahid, H.B. No. 142, Tehsil Dasuya, District Hoshiarpur and the sale deed dated 12.03.2003 executed by Darshan Singh-defendant No. 1 in favour of respondents-defendants No. 2 to 5-Manjit Singh, Daljit Singh, Paramjit Singh and Jagdish Singh is illegal and not binding upon the appellant-plaintiff as the same is without consideration and not for the benefit of the family and without the consent of the appellant-plaintiff, as a consequence thereof, the Mutation No. 4993, which was sanctioned, is illegal, null and void and not binding upon the rights of the appellant-plaintiff, stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District

Judge, Hoshiarpur on 14.12.2015.

2. It is the contention of the learned counsel for the appellant that both the Courts below have proceeded on the assumption that because of a Will dated 24.01.1959 executed by Waryam Singh, who is father of Darshan Singh, the land seems to be not an Ancestral Joint Hindu Family Coparcenary property. This, the counsel contends, is not sustainable as no Will has been produced by the respondents nor has such a plea been taken by them in their written statement. In the absence of any evidence and there being no pleadings to the said effect, no evidence could have been taken into consideration by the Courts below, which would be beyond the pleadings nor could it be relied upon to come to a conclusion that there was indeed a Will dated 24.01.1959 executed by Waryam Singh in favour of Darshan Singh breaking the chain of inheritance rendering the suit property self acquired. She, thus, contends that the impugned judgments on this count itself call for interference by this Court. In support of these submissions, counsel placed reliance upon a judgment of the Supreme Court in **Bondar Singh and others vs. Nihal Singh**, 2003 (2) RCR (Civil) 222 and a judgment of this Court in **Kanwar Pal vs. Ved Pal (dead) through LRs**, 2010 (2) Law Herald 1284.

3. That apart, counsel contends that there was an agreement dated 25.07.2006 entered into between the appellant-plaintiff with Manjit Singh, Daljit Singh, Paramjit Singh and Jagdish Singh (respondents No. 2 to 5 herein) wherein they had admitted to relinquish the share of the appellant-Amritpal Singh in his favour, which document has been duly proved and in fact, admitted by one of the respondents Manjit Singh-respondent No. 2. In the light of the said agreement Ex. P1, the finding could not have been

returned with regard to there being no right of the appellant-plaintiff in the suit land. She, thus, contends that the present appeal may be allowed by setting aside the impugned judgments and decreeing the suit of the appellant-plaintiff.

4. I have considered the submissions made by the learned counsel for the appellant and with her able assistance, have gone through the impugned judgments but do not find myself in agreement with the contentions as have been raised by the counsel for the appellant.

5. The onus to prove that the land i.e. 49 Kanals 7 Marlas was a Joint Hindu Family Co-parcenary Ancestral Property was upon the appellant-plaintiff. To establish the said assertion, she has placed reliance upon Mutation No. 2736 Ex. P1/A. The said document itself depicts that the property in question was received by Darshan Singh from his father Waryam Singh vide Will dated 24.01.1959. If that be so, the suit property has rightly been held by the Courts below to be no more a Joint Hindu Family Co-parcenary Ancestral Property but would be considered as a self-acquired property at the hands of Darshan Singh. The onus, which was upon the appellant-plaintiff, having not been discharged to establish that it was an ancestral property, the Courts have rightly rejected the same in the light of the evidence, which has been produced by the appellant-plaintiff himself i.e. Mutation No. 2736 Ex. P1/A. It has been held by this Court in various judgments that where the succession chain is broken by way of inheritance on the basis of a Will, the property would be considered as a self-acquired property. One of such judgment is **Taro Devi vs. Raunak Singh and others**, 2013 (5) RCR (Civil) 59

6. The judgments, on which reliance has been placed by the

counsel for the appellant, would not be applicable to the facts of the present case as in those cases, admittedly there was no specific stand pleaded by the parties but had proceeded to lead evidence which were not even asserted in the pleadings. It is under those circumstances that the Hon'ble Supreme Court and this Court have held that no evidence can be led, which is not supported or is supportive of the pleadings of the parties. Present is a case where the evidence, on which reliance has been placed by the Courts below, is based upon the evidence of the appellant-plaintiff, which, admittedly, was not produced by the respondents-defendants.

7. As regards the contention of the counsel for the appellant that there was an agreement dated 25.07.2006 Ex. P1/A, according to which, respondents No. 2 to 5 had agreed to relinquish 1/6th share in favour of the appellant-plaintiff, suffice it to say that although the said agreement has been proved on record but that was a conditional agreement, according to which, the appellant-plaintiff was required to withdraw his complaint, which he had filed against the respondents relating to some dowry articles and which complaint, admittedly, was not withdrawn by him. The certified copy of the judgment dated 19.05.2010 Ex. D3, which is the outcome of the complaint, clearly indicates that the same has been decided on merits and the same was not withdrawn. The condition incorporated in the agreement having not been fulfilled on the part of the appellant-plaintiff, the said agreement would not confer any right upon him and thus, would not be binding upon the respondents. The Courts below have rightly proceeded to return the said finding.

8. The findings, thus, recorded by the Courts below are based upon proper appreciation of the pleadings and the evidence brought on

record by the parties which do not call for any interference.

9. No other point has been raised or argued by the counsel for the appellant.

10. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

11. There is no substantial question of law in the present appeal, which requires consideration of this Court.

12. In view of the above, finding no merit in the present appeal, the same stands dismissed.

C.M. No. 6303-C of 2016

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

May 12, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**