

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No. 4726 of 2013 &
C.M. No. 12709-C of 2013

Date of decision: February 16, 2016

Avtar Singh and another

...APPELLANTS

Versus

Sewa Singh and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.S.Chauhan, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), SAS Nagar (Mohali) dated 09.08.2011, whereby the suit for declaration to the effect that the plaintiffs and defendants are co-parceners of the land detailed in the head note of the suit measuring 28 Kanal 3 Marlas situated within the revenue limits of Village Dorali, Tehsil Mohali, District Ropar and the house shown in the site plan Annexure-1 is a coparcenary property and that the respondent-defendant No. 1 be restrained from alienating, in any manner, any share out of the above-said property by granting permanent injunction, stands dismissed, appeal against which preferred by the appellants-plaintiffs has also been dismissed by the Additional District Judge, SAS Nagar (Mohali) on 16.07.2013.

2. It is the contention of the learned counsel for the appellants that as per the Excerpt Ex. P1 of the Jamabandis, which has been duly proved on record, the property has been shown to be inherited by Sewa Singh from his great grandfather. He, thus, contends that the property is ancestral and has been continuing as such as a co-parcenary property. Since the appellants-plaintiffs are co-owners of the co-parcenary property, they are entitled to the declaration, as has been prayed for. He contends that merely because a Will has been executed by Jai Singh, father of respondent-defendant No. 1, in his favour, from whom he has inherited the property by Mutation No. 2551 after the death of Jai Singh, the said Will would not make any difference as the co-parcenary property is an ancestral property, for which the Will could not have been executed by Jai Singh. He, thus, contends that the Courts have proceeded to decide the case without appreciating the correct position in law with regard to the nature of the property and the rights of the appellants-plaintiffs. He, thus, contends that the appeal be allowed by setting aside the impugned judgments and decreeing the suit of the appellants-plaintiffs.

3. I have considered the submissions made by the learned counsel for the appellants and have gone through the impugned judgments but find myself not in agreement with the contentions of the learned counsel for the appellants.

4. As per the Excerpt Ex. P1, the appellants-plaintiffs have been able to prove that the property has been inherited initially from Partap Singh, who was the original owner and great grandfather of Sewa Singh respondent-defendant No. 1. However the inheritance as such has been broken from the nature of co-parcenery property on the basis of the Will

dated 19.12.1969 executed by Jai Singh in favour of Sewa Singh. On the basis of the said Will, Mutation No. 2551 has been sanctioned in favour of Sewa Singh. Once the property devolved upon Sewa Singh on the basis of the Will ignoring the right of Isher Kaur d/o Jai Singh, the co-parcenary ceased to exist as the property became the self acquired in the hands of Sewa Singh. The property, therefore, cannot be said to be an ancestral property and the co-parcenary does not continue thereafter. The appellants-plaintiffs, thus, do not have any right over the property in dispute.

5. It may be mentioned here that the Will dated 19.12.1969 executed by Jai Singh in favour of Sewa Singh and the consequent sanction of Mutation No. 2551 on 05.02.1984 on the basis of the said Will, has not been challenged by the appellants-plaintiffs. If that be so, the finding, as recorded by the Courts below, that the property is not ancestral and, therefore, not the co-parcenary, cannot be faulted with. The judgments, on which reliance has been placed by the Courts below, are applicable to the facts of the present case and, therefore, the findings returned in the impugned judgments being in accordance with the pleadings and the evidence brought on record as also on law do not call for any interference.

6. 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. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

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

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In the light 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.

February 16, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**