

RSA No. 2063 of 2015 (O&M)

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

RSA No. 2063 of 2015 (O&M)

Date of Decision: March 01, 2016

Jaspal Kaur @ Pal Kaur

...Appellant

Versus

Mohinder Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Adarshpal Kaur, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.14831-C of 2015

Application is allowed, as prayed for.

Annexures A-2 to A-5 are taken on record, subject to all
just exceptions.

CM No.5398-C of 2015

Application is allowed, as prayed for, subject to all just
exceptions.

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Challenge in this appeal is to the judgment and decree
passed by the Civil Judge (Junior Division), Rajpura, dated
11.09.2013, whereby, the suit preferred by the appellant-plaintiff
against the respondent-defendant praying for a declaration to the

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effect that the petitioner is owner of the land to the extent of 1/12th share in the land measuring 15 biswas bearing Khewat/Khatoni No.104/158 comprised in khasra numbers as have been detailed in the head note of the plaint and further, for 1/4th share in the land measuring 99 bighas 0 biswas contained in khasra numbers as detailed in the head note, situated in the revenue estate of village Karala, Tehsil Rajpura, District Patiala and further, suit for declaration to the effect that collusive decree dated 07.11.1978 passed in Civil Suit No.298 dated 10.08.1978, passed in suit titled as 'Mohinder Singh & others Vs. Ujagar Singh & others' and the transfer of ownership-deed dated 13.03.2003 alleged to be executed by Rachna Singh in favour of defendants No.1 and 2 is illegal, null and void and having no binding effect over the rights of the plaintiff and the mutations No.1644 and 1127 and other entries made in revenue record showing the respondent-defendants No.1 and 2 to be the owners of the property and further that she be declared in joint possession of the property being an ancestral one stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District Judge, Patiala, on 19.01.2015.

It is the contention of the learned counsel for the appellant that the respondent-defendants in their Civil Suit No.298 dated 10.08.1978, titled as 'Mohinder Singh & others Vs. Ujagar

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Singh & others' have themselves admitted that the property in dispute is a coparcenary Joint Hindu property, therefore, the decree as passed by the Sub Judge IInd Class, Rajpura, dated 07.11.1978 is not sustainable and similar is the position with regard to the transfer deed in favour of respondent-defendants No.1 and 2. She contends that the joint Hindu family being coparcenary property cannot be got decreed or transferred merely at the will and fancy of the Karta and he is to prove and satisfy the mandate of legal necessity to do so and specific reasons are to be given for the same. The appellant-plaintiff and respondent-defendant No.3 being the daughters have been deprived of their legal rights as conferred upon them under the statute without any basis or justification especially when their father Rachna Singh could not have done so as it is not permissible in law. She, therefore, contends that the dismissal of the suit by the Courts below vide the impugned judgments cannot sustain and deserve to be set aside and suit of the appellant-plaintiff decreed.

I have considered the submissions made by the learned counsel for the appellant and with her assistance, have gone through the impugned judgments as also the plaint in the Civil Suit No.298 dated 10.08.1978.

A perusal of the above plaint in civil suit would show that initially, the property has been mentioned to be joint Hindu coparcenary property and thereafter, it has been mentioned that a

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partition has taken place and on the basis of the said partition, the coparcenary has been broken. This factum is apparent from the pleadings and the Court, therefore, has rightly passed the decree 07.11.1978, which has been impugned. The evidence which has been brought on record by the appellant-plaintiff proving the property to be an ancestral property is only to two degrees which does not fulfill the mandate. In any case, after the partition has taken place, the chain of the coparcenary is broken and therefore, it no more remains coparcenary and on that stage, the appellant-plaintiff has not been able to depict it to be an ancestral property. The judgments and decree as have been challenged as also the transfer deed, thus, cannot be faulted with especially when the challenge to the same is not based upon it being a fraudulent transaction. It would not be out of way to mention here that no evidence has been brought on record which would substantiate the allegations that the said documents were the result of fraud, misrepresentation or coercion. The findings as recorded by the Courts below, thus, cannot be faulted with.

No other point is argued by the learned counsel for the appellant.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is

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no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the appeal, the same stands dismissed.

CM No.5399-C of 2015

In view of the order passed in the main appeal, no order is required to be passed in the present application as the same has been rendered infructuous.

Disposed of as such.

March 01, 2016
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE