

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

**RSA No.1007 of 2014 (O&M)
Date of Decision-11.01.2016**

Ranjit Singh

... Appellant

Versus

Gurmukh Singh and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rakesh Chopra, Advocate for the appellant.

Mr. Raj Kumar Gupta, Advocate for the respondents.

RAJ MOHAN SINGH, J.

[1]. Plaintiff-appellant has preferred this Regular Second Appeal against the judgment and decree dated 21.10.2013 passed by Additional District Judge, Patiala vide which judgment and decree dated 10.03.2011 passed by Civil Judge, Junior Division, Rajpura has been affirmed.

[2]. Plaintiff filed a suit for declaration and joint possession and for permanent injunction to the effect that plaintiff is owner of 1/6th share out of total land measuring 81 bighas 13 biswas as mentioned in the plaint situated in revenue estate of village Banur, Tehsil Rajpura, District Patiala.

[3]. Plaintiff sought declaration to the effect that the sale deed dated 13.10.2004 executed by defendant No.1 in favour of defendant No.2 in respect of 19 bighas 16 biswas is illegal, null and void. Plaintiff further sought relief of joint possession as co-owner to the extent of $1/6^{\text{th}}$ share and also sought restraint against defendants No.1 and 2 from alienating the suit land or changing its nature to the extent of $1/6^{\text{th}}$ share as claimed by him.

[4]. Plaintiff alleged that suit land is joint Hindu family property of the plaintiff along with defendant No.1 and proforma defendants No.3 to 6. Plaintiff has got $1/6^{\text{th}}$ share out of total land by his birth in the suit land. The land measuring 72 bighas 15 biswas situated in village Rajindergarh, Tehsil and District Fatehgarh Sahib was also in the name of defendant No.1 and was a joint Hindu family property as the same was allotted to Captain Dia Singh by the Government who was in the service of Indian Army. Dia Singh was grand father of the plaintiff and proforma defendants No.3 to 6 and father of defendant No.1. After the death of Captain Dia Singh, the suit land was inherited by defendant No.1.

[5]. Plaintiff was in Indian Army and he retired in the year 1996 and is presently serving under Central Government. Defendant No.1 had sold 19 bighas 16 biswas of land vide registered sale deed dated 13.10.2004 in favour of defendant No.2 without any legal necessity. Sale deed has been assailed on the ground that defendant No.1 has illegally sold this land without there being any

legal necessity and he is in questionable habits. The sale deed has been claimed to be null and void as the plaintiff along with defendant No.1 and proforma defendants No3 to 6 are members of joint Hindu family and as such plaintiff is having 1/6th share in total land and defendant No.1 has no legal right to alienate the suit land.

[6]. Suit was contested by the defendant No.1 claiming that suit land is not a joint Hindu family property and plaintiff has no birth right in it. The suit land was allotted to the father of defendant No.1 in lieu of services rendered by him subject to conditions. Father of defendant No.1 had expired without making payment of allotted land and after his death remaining payments of the allotted land were paid by defendant No.1 and land was directly transferred to defendant No.1 by Government of Punjab. The property is self acquired property in the hands of defendant No.1 and sale deed executed by defendant No.1 in favour of defendant No.2 was for legal necessity to pay the debt which defendant No.1 had owned for construction of residential house and marriages of children being head of the family. Sale deed is claimed to be legal and for consideration.

[7]. Defendant No.2 also filed separate written statement on the similar line as filed by defendant No.1 and alleged therein that plaintiff has no right to challenge the same as defendant No.2 is a bona fide purchaser. Defendant No.2 is the registered society under the Society Registration Act. The Society vide Resolution dated

07.03.2005 had authorized Ravinderpal Singh its member to pursue and conduct the case on behalf of society.

[8]. After filing replication, following issues were frame by the trial Court:-

“1. Whether the plaintiff is entitled to relief of declaration as prayed for? OPP

2. Whether the plaintiff is entitled for joint possession as co-owner? OPP

3. Whether plaintiff is entitled to permanent injunction as prayed for? OPP

4. Whether the suit is not maintainable in its present form? OPD

5. Whether the plaintiff has not come to the Court with clean hands? OPD

6. Relief.”

[9]. Parties led their respective evidence to prove their case. Trial Court as well as Lower Appellate Court dismissed the claim of the plaintiff by holding that land is not proved to be a joint Hindu family coparcenary property, rather it is proved to be a self acquired property in the hands of defendant No.1. The main controversy in the present appeal is revolving around the nature of property in the hands of defendant No.1. Admittedly father of defendant No.1 was serving in Army and in lieu of services rendered by him, the land was allotted to him. Question arises as to what was the nature of such allotment, whether that confirmed any title or it was a case of

settling the Ex-Serviceman on the land who was willing to cultivate the land personally.

[10]. I have heard learned counsel for the parties and have also carefully perused the record with the assistance of the learned counsel for both the parties.

[11]. Learned counsel for the appellant has formulated following substantial questions of law in para 22 of the grounds of appeal:-

1. Whether on account of sanction of mutation in the name of defendant/respondent No.1 directly after the death of his father on the basis of allotment of the suit land made in the name of his father by the Government of Patiala and East Punjab State much prior to the death of the father makes the property in suit as the absolute property of defendant/respondent No.1?

2. Whether defendant/respondent No.1, who was not Ex-serviceman, could be treated as allottee of the land in question, which has been allotted prior to the death of his father, on account of his being Ex-serviceman by the Government of Patiala and East Punjab State under Section 38 of the Patiala and East Punjab States Union Tenancy and Agricultural Lands Act, 1953 (present Act No.8 of 1953)?

3. Whether the impugned decrees and judgments are perverse and arbitrary?"

[12]. First of all, the origin of allotment in question in favour of Dia Singh has to be appreciated. Government of Patiala and East Punjab States Union vide notification dated 07.07.1953 framed the

scheme in exercise of powers confirmed by Section 38 of the Patiala and East Punjab States Union Tenancy and Agricultural Lands Act, 1953. The scheme was framed in the following manner:-

There shall be established two colonies on the following banjar lands, acquired under Chapter v of the said Act for the purpose of settling on banjar land such ex-servicemen who are willing to cultivate the land personally, namely:-

(a) area near Dhakauli and surrounding 1180 acres villages Tehsil Rajpura

(b) area near Gill, Tehsil Kapurthala and surrounding villages ---
do---

[13]. Certain conditions were formulated in respect of antecedents of the Army personnel who were required to contribute a sum of Rs.500/- towards colony expenditure, as individual's share. It was decided to settle ex-servicemen in the colony who abide by rules of colony organization/co-operative society. Board will exercise overall control and carry out general administration over the colonies and will be in overall charge of the Ex-servicemen Land Settlement Schemes. They will operate the fund and settle all questions, subject to general supervision of the State Government. The settlers shall have no right to sell, mortgage or encumber the land. Administrative instructions and bye-laws will be formulated by the Officer on Special Duty, Home Department (Military) PEPSU

Government in consultation with the concerned Agricultural and Co-operative Officers.

[14]. Bare reading of aforesaid scheme shows that only right to cultivate the land was decided to be given to the ex-servicemen under the aforesaid scheme that was only in the form of lease hold rights subject to restrictions and conditions and settlers were not given any right to sell or mortgage or create encumbrance over the suit property. From the reading of aforesaid documents, it can very well be concluded that there was no allotment of title in favour of ex-servicemen, rather it was a settling phenomenon of ex-servicemen on banjar land who were willing to cultivate the land. Said right was subjected to restrictions and under overall general supervision of the State Government. Ex-servicemen were sought to be settled without confirming any title to them.

[15]. Apparently, the case of the plaintiff is based on the ancestral nature of the property and on that premise plaintiff sought that defendant No.1 was not competent to alienate the suit land without any legal necessity or bona fide purpose. In the revenue record viz. Ex.P-4 *jamabandi* for the year 1966-67, status of Captain Dia Singh (father of defendant No.1) has been shown as *Gair Morusi allottee*. In the subsequent *jamabandies* defendant No.1 has been shown as owner of the property i.e. Ex.P-15 *jamabandi* for the year 2006-07. Mutation No.8006 was sanctioned in favour of defendant No.1 directly from the original owner i.e. Government of

Punjab and in the column of possession Captain Dia Singh as *Gair Morusi Fauji Allottee* has been shown whereas in column No.9 name of defendant No.1 has been shown as owner. In the mutation, Punjab Government was shown as owner of the property at the time of sanctioning of the mutation and defendant No.1 was simply shown in possession of the land as *Gair Morusi*. The very nature of entry like *Gair Morusi allottee* if read in conjunction with the policy notification dated 07.07.1953, it can be inferred that the allotment was sought only to give cultivation right i.e. ex-servicemen who were willing to cultivate the banjar land near Dhakoli, Tehsil Rajpura and near Gill, Tehsil Kapurthala. Therefore, allotment has to be understood strictly in consonance with the nature of confirmation sought to be given by the aforesaid notification.

[16]. Mutation was never sanctioned during lifetime of Dia Singh and he died in the year 1969. Thereafter, mutation was directly sanctioned in the name of defendant No.1 as owner but in the column of possession Captain Dia Singh has been shown as *Gair Morusi Fauji allottee*. This case is revolving around factual matrix where land in the hands of Dia Singh was ancestral land. There is no evidence on record that defendant No.1 has inherited any property from his father. Mutation in question was not mutation of inheritance, rather it was direct mutation of ownership from Government of Punjab in favour of defendant No.1. The status of Captain Dia Singh was only *gair morusi allottee* and not as owner of the land. Therefore the property cannot be treated to be joint Hindu

family coparcenary property in the hands of Dia Singh or even that was not a self acquired property of Captain Dia Singh, right of ownership was never confirmed upon him as per entries in the revenue record.

[17]. Learned counsel for the appellant sought to argue that the property in the hands of defendant No.1 was joint Hindu family coparcenary property and therefore, alienation made by defendant No.1 in favour of defendant No.2 could not have been made by him without any legal necessity and for bona fide purpose on the ground that plaintiff-appellant has a birth right in the ancestral property. Property in the hands of manager cannot always be deemed to be coparcenary property unless it is shown that the said property had been descended from common ancestors i.e. father, grand-father or great grand father. If the property is inherited from any other source that will not be deemed to be a coparcenary property.

[18]. A joint family property and ancestral property in common parlance is known as coparcenary property. Separate property cannot be treated to be coparcenary property. Joint family property i.e. coparcenary property is the property which is inherited from common ancestors. In such property every co-owners had a joint interest and joint possession. The attribute of coparcenary and joint Hindu family property devolves by survivorship and not by succession. The propositions of succession are to be understood in the light of various provisions of Hindu Succession Act wherever

they are applicable. In joint family property/coparcenary property, the male issue of coparceners acquires an interest by birth. In case of a Hindu separate property, no other member of coparceners acquires any interest by birth. A Hindu even if living in joint family may possess separate property which he can sell in any manner. On death of Hindu such property passed over to his heirs by succession and not by survivorship. Doctrine of blending is not uncommon in India. Any property which was originally separate or a self acquired property of a member of joint family or a coparcener may become joint family property if it is voluntarily thrown by such member into common pool with an intention to abandon separate claim over such property. For that a clear intention of waiver of separate right by such member for such property is the necessary requirement which has to be established. There is exception to this rule that the property hold by Hindu family has a limited owner which cannot become joint family property or coparcenary property by operation of coparcenary blending.

[19]. Learned counsel for the appellant relied upon **1988 AIR (J&K) 33, Balak Ram Vs. Shiv Ram, 2010(5) RCR (Civil) 64, Sher Singh and others Vs. Sarja Singh and another, 2006(1) GujLH 171, Kantibhai Ishwarbhai Patel Vs. Chandrakant Ishwarbhai Patel and others, 2013(1) CCC 391 (AP), Samanthula Venkata Narayan Reddy Vs. Samanthula Dasaradha Rami Reddy and another, 2013(2) CCC 328 (Bombay), Bhagirathibai and another Vs. Tanabai (deceased) through LRs, 1997(1) Apex Court**

Journal 290 (SC), Sher Singh and others Vs. Gamdoor Singh and 2014 (1) CCC 255 (Rajasthan), Digvijay Singh and others Vs. Sant Ram and others. Learned counsel for the appellant has also tendered written arguments on the broad proposition of the property being ancestral and coparcenary in the hands of defendant No.1 qua the plaintiff.

[20]. On the other hand, learned counsel for the respondents has relied upon **1986 AIR (SC) 1753, Commissioner of Wealth Tax, Kanpur etc. Vs. Chander Sen etc. and 2007(4) ICC 458, Mrs. Mallika and others Vs. Mr. Chandrappa and others.**

[21]. The contention of learned counsel for the appellant that the property is proved to be Hindu joint family coparcenary property has to be negated even as per precedents cited at the bar. Though such proposition does not involved in the present case in the light of nature of allotment proposed to be made in favour of father of defendant No.1, which was in the nature of *gair morusi allottee* and title was never sought to be confirmed even in view of policy framed by the competent authority. In the cited judgment **Kantibhai Ishwarbhai Patel's case (supra)** the suit property was inherited by the deceased father from his grand father. Degree of generation has to be complied with so as to claim coparcenary property. In that case, there was an admission that the suit property was inherited by the father from his grand father and therefore property became coparcenary property and unless and until a partition by metes and

bounds is effected, the suit property continue to be coparcenary property and none of the coparcener has any exclusive right to deal with the suit property to prejudice of the rights of other coparcener. The cited case is apparently on different parameters and cannot be equated with the alleged plea taken herein by the appellant. Similarly in Balak Ram's case (supra) the property was inherited from the father which was coparcenary property in the hands of the father. The doctrine of blending has been discussed in the said case with reference to **State Bank of India Vs. Ghamandi Ram, AIR 1969 Supreme Court 1330**. The proposition highlighted in that case are not attracted to the facts and circumstances of the present case. Similarly, in Sher Singh and others vs. Sarja Singh and another's case (supra), question arise before this Court was in respect of sole surviving male who received the property as self acquired property, if, there is no child from him. Sole surviving male would get the property as self acquired property because he being the last surviving coparcener, nothing would devolve upon subsequent coparceners after him, therefore, by such ancestral property inherited by such sole surviving male could be treated to be self acquired property but once birth of his son takes place the status of the property would be revived to be that of joint Hindu family coparcenary property. No such proposition is involved in the present case and therefore, the cited precedents has no application in the present context. Samanthula Venkata Narayan Reddy Vs. Samanthula Dasaradha Rami Reddy and another's case (supra) on

deeper consideration gives rise to different proposition. Proposition was that if one got any property on account of illatum or with his self-acquisitions, that cannot be treated as ancestral by his immediate legal descendants. In the said case, both the Courts disbelieved the theory of illatum and facts of said case cannot be held to be of universal application.

[22]. Learned counsel for the respondents on the strength of Commissioner of Wealth Tax, Kanpur etc. Vs. Chander Sen etc. (supra) submitted that in the light of Section 8 of Hindu Succession Act, the factum of inheriting separate and self acquired share by a son of his father has been modified by said Section 8 of Hindu Succession Act, now it provides inter alia that the property of a male Hindu dying interstate devolved according to the provisions of that Chapter in the Act and it will devolve first upon the heirs being the relatives specified in Class I of the Schedule. Heirs in the Schedule, Class I includes and provides firstly son and thereafter daughter, widow and others. It is not necessary that other clauses indicated in Section 8 or other heirs mentioned in the Schedule would overlap with each other. The Hon'ble Apex Court took cognizance on the divergent views expressed by different High Courts in the said judgment.

[23]. In Mrs. Mallika and others Vs. Mr. Chandrappa and others etc.'s case(supra) the Karnataka High Court held that self acquired property of father inherited by son shall have the effect of

self acquired property and his heirs has no right of coparceners. The aforesaid citations cited at the bar have been taken notice of, even though no such proposition is involved in the present case in view of the fact that there was no title conferred upon Dia Singh by the dint of notification dated 07.07.1953 issued by Government of Patiala and East Punjab State Union. It was only a right of cultivation conferred upon the willing ex-servicemen who were willing to cultivate the land with restrictions and overall control of the competent authority and these settlers were not conferred by any right to sell, mortgage and create encumbrance over the suit land. Therefore, in the revenue record, status of Dia Singh was categorized as *gair morusi allottee*.

[24]. The word 'allottee' cannot be confused with the title. The allotment was apparently in respect of cultivator and thereafter, the persons like Dia Singh were categorized as *gair morusi allottee* in the revenue record. No such concept of coparceners can be evolved from such facts on record. The property cannot be treated to be coparcenary property in the hands of Dia Singh nor it can be considered as coparcenary property in the hands of defendant No.1 who got the property directly by way of direct sanctioning of mutation on the basis of letter dated 18.02.1980. During the pendency of suit, second sale deed dated 16.02.2005 in favour of defendant No.2 came to be executed.

[25]. Having considered the submissions made at the bar and perusal of the record, question No.1 as formulated by the appellant does not arise at all. Notification dated 07.07.1953 conferring right of cultivation in favour of ex-servicemen was never intended to give any right of title in favour of cultivator. A direct mutation entered in favour of defendant No.1 by the Government does not make the property to be ancestral coparcenary property in the hands of Dia Singh nor it came in the hands of defendant No.1 as a joint Hindu Coparcenary property. The concept of aforesaid joint Hindu family coparcenary property does not arise at all. Question No.1 cannot be answered in favour of the appellant. Question No.2 as framed also does not arise inasmuch as that perusal of the notification dated 07.07.1953 only provided allotment of lease hold right in favour of those ex-servicemen who were willing to cultivate the land subject to certain terms and conditions and they were not held entitled to alienate, mortgage or create encumbrance over the land. Only a right of cultivation was conferred and thereafter, status of those persons in the revenue record as *gair morusi allottee* has necessary nexus with the intention in the notification and those persons were never conferred with any title of the land. A direct mutation in the name of defendant No.1 from the Government cannot create any title in favour of Dia Singh beyond the scope of notification which has its specific meaning. Therefore, this question also does not arise. The third question is, dependent upon the nature of evidence

led on record, which in considered opinion of this Court cannot be held to be result of perversity or arbitrariness in any manner.

[26]. I have given thoughtful consideration to the controversy and I find that no indulgence can be granted in this appeal. Consequently, this appeal is dismissed.

11.01.2016
Prince

(RAJ MOHAN SINGH)
JUDGE