

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

**RSA No. 307 of 2014 (O&M)
Date of Decision: 14.01.2016**

Mahinder and another

.....Appellants

Vs.

Sher Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Kul Bhushan Sharma, Advocate,
for the applicants-appellants.

AMOL RATTAN SINGH, J. (ORAL)

C.M. No. 716-C-2014

For the reasons, mentioned in the application, the delay of 69 days in re-filing the appeal is condoned.

Civil miscellaneous application stands disposed of accordingly.

RSA No. 307 of 2014 (O&M)

This appeal has been filed by the plaintiffs, consequent upon their suit seeking declaration and permanent injunction qua the suit property, having been dismissed by learned Civil Judge (Jr. Division), Faridabad, vide judgment dated 28.04.2011 and the appeal also having been dismissed by the first Appellate Court, vide its judgment dated 02.03.2013.

2. The facts as stated before the first Court, were that the suit property formed a part of a joint Hindu coparcenary family property of the plaintiffs-appellants and was ancestral property initially in the hands of one Dev Karan, who was succeeded by his two sons Trikha and Mohra. Trikha was succeeded by his three sons, Ramphal, Malkhan and Nathan and a fourth son Kallu who died leaving behind no male lineal descendent, but only one daughter, Sarman. Consequently, Trikha was succeeded only by the three surviving sons, i.e. Ramphal, Malkhan and Nathan. Ramphal is stated to be the grand-father of the appellants, who became '*Karta*' of the joint Hindu family coparcenary property after the death of his father Trikha. The property that devolved upon Ramphal was 1/6th of the share of the joint coparcenary property.

3. The present dispute, however, arises out of devolution of the land in the hands of Ramphal, to his children, and not out the previous succession. He had four sons, Munshi, Sheeshram, Lal Chand and Jagram, as also a daughter, Ghoshan.

Ghoshan died in 1945 leaving no male descendent and Jagram died in 1947, also leaving behind no male descendant. However, Jagram had three daughters, Son Dei, Resham and Dhakeli, other than his widow, Lal Kaur. Lal Kaur is stated to have remarried Munshi, brother of Jagram in the year 1948. Ramphal died in 1972.

The contention of the appellants is that they being governed by the Mitakshara school of customary law, the share

falling to Jagram devolved upon the surviving male coparceners in the property, as prior to the Hindu Succession Act, 1956, coming into force, the daughters and widow of Lal Chand could not succeed to the property. Therefore, the 1/30th share of Jagram, equal to the other male coparceners (i.e. Ramphal, Munshi, Sheeshram and Lal Chand), devolved upon them. The appellants are the son and daughter of Lal Chand. Consequently, they sought, in the suit, that they be declared owners of 23/450th of the ancestral suit land, as fell to their share in equal division with their coparceners, upon whom also similar share of the suit land devolved, on the death of Lal Chand in 1947.

4. The four sets of defendants impleaded before the trial Court filed their replies, of which defendants 1 (a to g), 3 (a to e) and 4 (a to c) filed a joint written statement, i.e. the present respondents No. 1 to 7, 9 to 13 and 16 to 19. Defendant No. 2, i.e. presently respondent No. 8, Sheeshram, son of Ramphal, filed a separate written statement before the trial Court.

The trial Court having framed six issues, including the main issue as to whether the appellants are owners in possession of 23/450th share and are entitled to a decree of permanent injunction, also framed an issue whether the suit was bad for want of concealment of material facts from the Court.

5. As per the evidence led before that Court, it was shown by the respondents-defendants that Sardaro (respondent No. 7), daughter of late Munshi, Golo daughter of late Ghoshan, Sondei, Resham and Dholki (daughters of late Jagram)

(respondents No. 16 to 18), Lal Kaur, widow of Jagram (respondent No. 19), Bohti, widow of late Sardar (respondent No. 4) and Sher Singh, son of late Munshi (respondent No. 1), had all suffered a consent decree in favour of Hukam Singh, son of late Sardar (respondent No. 5), Gulab Singh and Harbans Singh, sons of Sher Singh (respondents No. 2 and 3).

The said consent decree had been challenged by the present appellants-plaintiff along with their uncle, Sheeshram, by way of a suit earlier filed before the learned Civil Judge, Faridabad, a copy of which was exhibited as Ex. D1. The said suit was admitted by the appellants in their cross-examination and the fact that the said suit had been decided against them (present appellants), vide judgment and decree dated 04.11.1999, was also admitted. The said judgment and decree were exhibited as Ex. D2 and D3 before the learned trial Court, in the proceedings out of which the present appeal arises. An appeal was filed against the said judgment and decree, which the appellants admitted was also dismissed on 24.01.2002, vide judgment and decree Exs. D4 and D5.

Other than that litigation, the appellants also admitted that they had filed another suit which, at the time of their testimony in the present case, was still pending before the Court of the learned Civil Judge (Jr. Division), Faridabad, in which the subject matter was the same suit property.

6. Having recorded a finding with regard to the earlier litigation, the learned trial Court stated that if the plaintiffs

(appellants here) were aggrieved of the manner of devolution of the property of Jagram in 1947, or after the death of Ramphal in 1972, they could have raised that issue even in the earlier round of litigation. It was further observed that the share of Jagram had been transferred to Hukam Singh, Gulab Singh and Harbans Singh, pursuant to a judgment and decree dated 26.03.1990 (Ex. P8), i.e. the collusive decree which was challenged by them, which challenge was dismissed.

Therefore, the earlier litigation also being qua the same land, and the appellants not having raised the issue of succession to the share of Jagram, in the coparcenary property, the suit out of which the present appeal arises was held to be not maintainable, as per Order 2 Rule 2 of the Code of Civil Procedure, 1908. Thus, having held that even if the appellants were entitled to the suit property in the manner that they had set out in the suit, they were ousted on the ground that the earlier litigation in respect of the suit land having attained finality, the issue obviously could not be reopened. Consequently, the suit filed by the appellants was dismissed.

7. The appeal filed by them before the lower appellate Court was also dismissed on the same ground.

8. Mr. Kul Bhushan Sharma, learned counsel appearing for the appellants, vehemently argued that the Hindu Succession Act, 1956, having come into force only w.e.f. 17.06.1956, the property would devolve as per customary law upon the death of Jagram in 1947, when the succession to the suit property first

opened. With the exclusion of the female heirs of Jagram, he contended that the property would devolve in equal shares upon all coparceners (males) eventually, on the death of Ramphal in the year 1972.

However, when queried by this Court with regard to the factum of the earlier litigation and any inadvertent mis-recording by the Courts below in that regard, he fairly admitted that the earlier litigation was also in respect of the same suit property.

9. In view of the above and having considered the judgments impugned, I find no error in the view taken and findings of, the learned Courts below. Consequently, no further question of law would require adjudication by this Court, those Courts having come to a correct finding on the issue.

The appeal is consequently dismissed in *limine*, with no orders as to costs.

(AMOL RATTAN SINGH)
JUDGE

January 14, 2016
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