

In the High Court of Punjab and Haryana at Chandigarh

**R.S.A. 4111 of 2014 (O&M)
Date of Decision: February 08, 2016**

Bakhshish Singh

... Appellant

Versus

Jangir Singh (since deceased) through his LRs and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgments?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

**Present: Mr. Aseem Kataria, Advocate,
for the appellant.**

Paramjeet Singh Dhaliwal, J.(Oral)

CM-9539-C-2014

Instant application filed under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence i.e. jamabandi for the year 1973-74.

I have heard learned counsel for the appellant and perused the record.

Jamabandi for the year 1973-74 is a public document and is relevant for just decision of the case and its evidentiary value is to be seen while deciding the appeal. Said jamabandi is a *per se* admissible document and can be exhibited on record.

Accordingly, instant application is allowed. Jamabandi for the year 1973-74 is taken on record as Ex. A/1.

RSA No. 4111 of 2014

This regular second appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 07.05.2011 passed by learned Civil Judge (Junior Division), Fazilka whereby suit filed by the plaintiff for declaration and permanent injunction has been dismissed, as well as, against the judgment and decree dated 24.09.2013 passed by learned Additional District Judge, Ferozepur, whereby appeal preferred by the appellant/plaintiff has also been dismissed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiff filed a suit for declaration and permanent injunction on the ground that land measuring 65 kanals 17 marlas being 1317/7420 share of the total land measuring 371 kanals, as detailed in the headnote of the plaint, was in the hands of Bahal Singh son of Mit Singh, who inherited the same from his father as Manager/Karta of joint Hindu family consisting of defendants no. 1 to 4 and the plaintiff. The plaintiff and defendant nos. 2 to 4 are the sons of defendant no.1. The suit property is said to be the joint Hindu family, ancestral and coparcenary property. The land measuring 46 kanals 7-1/2 marlas i.e. 1/8th share of total land referred to above is recorded in the name of defendant no.1, who also inherited the land measuring 23 kanals 3-3/4

marlas from his mother – Kartar Kaur. Defendant no.1 is, thus, said to be owner of total land measuring 69 kanals 11 marlas. Defendant no.1 is addicted to all sorts of bad vices like wine, gambling etc. and in order to satisfy his lust and vice, defendant no.1 has already effected sale deed qua the land measuring 3 kanals 14 marlas in favour of Mal Singh, Tehal Singh sons of Inder Singh and Tara Singh son of Machhi Singh. Defendants no.2 to 4 are very mischievous persons and they procured/arranged a sale deed by playing fraud on 04.08.2004 by misleading the facts, in respect of land measuring 65 kanals 17 marlas bearing Wasika No. 1047. Said property is also to be given to the plaintiff to the extent of his share. The plaintiff claims having gained knowledge about the impugned sale deed only a few days ago when defendants no.2 to 4 started declaring themselves to be the exclusive owners of the suit land. They have even threatened to disturb the peaceful possession of the plaintiff and to alienate the land acquired by them by virtue of sale deed in favour of some one else, to which they have no right or justification. Hence, suit was filed.

Upon notice, defendants no.3 and 7(c) and (d) appeared. Defendant no.3, the only contesting respondent, filed written statement wherein he admitted the relationship between the parties but denied that the parties constitute joint Hindu family or defendant no.1 was the karta of the joint Hindu family. It is averred that Bahal Singh, father of defendant no.1 was not the owner of the suit property nor defendant no.1 inherited the property from his father Bahal Singh. Sale deed dated 04.08.2004 executed by defendant no.1 in favour of defendants no. 2 to 4 is legal and valid being self acquired property of defendant no.1.

On the basis of the pleadings of the parties, the Court of first instance framed the following issues:-

- “1. Whether the plaintiff is entitled to declaration as prayed for? OPP*
- 2. Whether the transfer deed dated 4.8.2004 executed by defendant no.1 in favour of defendants no. 2 to 4 is wrong, illegal, null and void and not binding upon the plaintiff? OPP*
- 3. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP*
- 4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*
- 5. Whether the plaintiff has concealed the material facts from this Court? If so, its effect? OPD*
- 6. Relief.”*

The Court of first instance, after appreciating the evidence on record, dismissed the suit vide judgment and decree dated 07.05.2011. Against that, plaintiff preferred an appeal, which has also been dismissed by the lower appellate Court vide judgment and decree dated 24.09.2013. Hence, this second appeal.

I have heard learned counsel for the appellant.

Learned counsel for the appellant has submitted that the following substantial questions of law formulated in para no. 6 of grounds of appeal, arise for consideration in this second appeal:-

- “a) Whether judgment and decree impugned in the appeal is sustainable on the basis of perverse finding given by the learned courts below?*
- b) Whether the learned trial Court justified to decline the relief of declaration in the suit especially when the appellant is able to prove the property in dispute is ancestral, coparcener and*

joint Hindu family property governed by Hindu Law Mitakshara School?

- c) Whether defendant/respondent no.1 have any right to execute a sale deed/transfer deed in favour of respondent Nos. 2 to 4 especially when defendants failed to prove any legal necessity?*
- d) Whether the learned Courts below justified to decline the relief of injunction against the respondents qua the share of appellant in the suit land?”*

Learned counsel for the appellant contended that the findings recorded by both the Courts below are against law, without appreciation of facts and not sustainable in the eyes of law.

I have considered the contentions raised by learned counsel for the appellant and perused the record.

The Court of first instance, after appreciating the evidence on record, have recorded findings of fact, which are as under:-

“6. Both these issues are being taken up together being inter-connected and inter-dependent and can conveniently be discussed as such in order to avoid tautology. As stands recapitulated from the respective contentions of the parties, the sole claim of the plaintiff in the instant suit is based upon the allegations that the property in suit is the ancestral coparcenary property having been acquired by defendant no.1 Jangir Singh from his father Bahal Singh. On the other hand, the property in dispute is claimed to be the self owned and self acquired property of defendant no.1. Thus, in order to prove his entitlement to the relief of declaration and to get the sale

deed in question declared as null and void, all that was required of the plaintiff was to prove that the property in suit had been inherited by defendant no.1 from his father Bahal Singh. Although the plaintiff while appearing as PW1 reiterated his entire version of the case, he clearly admitted in his cross-examination that the land measuring 47/48 acres was allotted to his father Jangir Singh and his brother Dara Singh by the Provincial Government. There is no document on the record to establish that the land is suit originally belonging to Sh. Bahal Singh or that it was inherited by Jangir Singh defendant no.1 from his father so as to dub the same as the ancestral property in his hands. Rather, it is clearly admitted by the plaintiff during the course of his cross-examination that the land in suit was allotted to his father and the brother of his father. The contention raised on behalf of the plaintiff that the defendant has not stepped into the witness box to rebut the contention of the plaintiff, cannot be sustained as according to the settled proposition of law, it is the plaintiff who has to prove his own case by leading independent, cogent and convincing evidence and mere failure of the defendant to step into the witness box cannot and does not clothe of plaintiff with a vested right to get the claimed relief. This being the situation i.e. there being no evidence in the shape of any document to prove that the property originally belonged to Sh. Bahal Singh and was inherited by

defendant no.1 from his father, and in the wake of admission on the part of the plaintiff himself that the land was allotted to his father by the Provincial Government, the plaintiff has miserably failed to substantiate his version that the property in dispute was the ancestral property in the hands of defendant no.1. Thus, defendant no.1 being the owner and the property in suit being the self acquired property having been allotted to defendant no.1 by the Provincial Government, he was fully competent to deal with his own property in any manner he liked and exercising such a legal right, he transferred the property in the name of defendants no.2 to 4 which can be no stretch of imagination to be termed or dubbed as null or void one. As a consequence, the plaintiff cannot be held entitled to the relief of declaration as claimed by him.....”

Said findings have been affirmed by the lower appellate Court.

The finding with regard to nature of the property that it is not ancestral property, has been recorded after appreciating the evidence on record. There is no evidence except the jamabandi for the year 1973-74, now produced. Perusal of jamabandi (Ex.A/1) also indicates that Bahal Singh was allotted the land by the Provincial Government. In the ownership column, the Provincial Government has been recorded as owner. The decision by both the Courts below on the question of ancestral nature of the property is finding of fact based on the basis of record. Such finding

has been recorded after considering the evidence. Learned counsel for the appellant has failed to show that there is any evidence on record to indicate the ancestral nature of the property.

Concurrent findings of fact have been recorded by both the Courts below. Findings recorded by the Courts below are based on documentary evidence. Learned counsel for the appellant could not show that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, said findings of fact do not warrant interference in second appeal. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

February 08, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge