

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 5277 of 2014 (O&M)
Date of decision : February 2, 2016

Ram Singh and another

..... Appellants

Versus

Randhir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. H. S. Saggu, Advocate
for the appellants.

Mr. Sudhir Mittal, Advocate
for respondent Nos. 1 and 2.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The appellant-defendant is aggrieved against the concurrent finding of fact whereby the suit for declaration, joint possession and permanent injunction has been decreed holding that the property at the hands of Puran Singh-defendant No.2 was ancestral.

The plaintiffs-respondents before the trial court are none else but sons of Puran Singh who had sought declaration and injunction challenging the sale deed in respect of land measuring 11 bighas and 18 biswas in favour of defendant No.1-Ram Singh vide sale deed bearing Vasika No. 1410 dated 9.7.2007 on the ground

that they had a right by birth in the property as the property at the hands of Puran Singh was ancestral.

Mr. H. S. Saggu, learned counsel appearing on behalf of the appellants submits that the respondents-plaintiffs have miserably failed to prove the character and nature of the property being ancestral at the hands of Puran Singh. The jamabandi proved on record show that Puran Singh inherited the property from his father-Toti Ram who was a second generation and alleged having an ancestral right in the property being third generation. No documentary evidence had been shown to prove that the property at the hands of the plaintiffs was ancestral. In essence, whether the property is of immediate third paternal generation having been inherited by Puran Singh from his father. Mere admission of Puran Singh in an earlier judgment and decree would not change the character and nature of the property as ancestral. Even the compromise Ex. P-3 relied upon by the plaintiffs on the statement of the plaintiff was also recorded to the same effect, thus, submits that there is illegality and perversity in the impugned judgment and decree and following substantial question of law arise for determination by this Court.

“1. Whether the respondents-plaintiffs have been able to prove nature and character of the property at the hands of Puran Singh being ancestral or not.

2. Whether the respondents-plaintiffs had complied with the High Court Rules and Orders by proving original excerpt to show the nature of the property being ancestral.”

Mr. Sudhir Mittal, learned counsel appearing on behalf of respondent Nos. 1 and 2 submits that non-production of the original excerpt would not fetter the adjudication of *lis* between the parties, for, the revenue record proved on record show that the property at the hands of Puran Singh was inherited by him from his father-Toti Ram and plaintiff being son of Puran Singh would have right by birth and it would constitute co-parcenary/ancestral property. In support of his contentions, he has relied upon the judgment of Hon'ble Supreme Court in **Valliammai Achi Vs. Nagappa Chettiar and another AIR 1967 SC 1153.**

He has also drawn attention of this Court to paragraph 223 of the principles of Hindu Law Chapter 12 of Mulla (16th edition) to contend that the property is inherited from the forefathers and it would constitute ancestral property. The jamabandis irresistibly proved on record, that the land/property was inherited by Puran Singh from Toti Ram, his father who is grand father of the plaintiff, it was ancestral in nature.

He further submits that this Court had issued notice of motion viz-a-viz mediation, therefore, the appellants-defendants are precluded from raising these questions, much less pressing the grounds of appeal. Concurrent finding of fact cannot be interfered until and unless a very strong substantial question of law arise.

I have heard learned counsel for the parties and appraised the paper book.

I am of the view that the appeal deserves to be allowed for the following reasons:-

While referring to the High Court Rules and Orders, this Court finds that excerpt should be a true copy and should be proved. Court must remember that unless original excerpt is proved through Special Kanungo or Patwari Muharrir is not evidence and must not be treated as such. The Special Kanungo or Patwari Muharrir must, when he goes to Court always bring with him the original records from which his excerpt has been compiled. For the sake of brevity rule (v) and (vi) of Chapter 9 of High Court Rules and Order Volume-I is reproduced hereinbelow:-

“Excerpt should be a true copy and should be proved. Court must remember that unless proved the excerpt of the Special Kanungo or Patwari Muharrir is not evidence and must not be treated as such. The Special Kanungo or Patwari Muharrir must, when he goes to Court always bring with him the original records from which his excerpt has been compiled., so that he may be available for comparison. He must always be put on oath, and be asked to say whether the excerpt is a true copy of a portion of the original records. The excerpts must be a correct copy of such portions of the records as are relevant and or merely a summary or paraphrase.

vi) Comparison with original. The court should, as a rule, compare, with the original records some of the entries in the abstract and initial and date those thus compared.”

The aforementioned question came into consideration before this Court in **Banta Singh Vs. Phuman singh** **1972 PLJ 275** and as well as in **Gurmail Singh Vs. Rajbir Singh**

and another 2014 (4) RCR (Civil) 397 wherein it has been held that in the absence of original excerpt the revenue record would be immaterial to form an opinion whether the property was ancestral or not.

Assuming for an argument sake, that the documentary evidence brought on record, if it had been tabulated in the form of excerpt, whether the same would constitute ancestral property or not. On examination of jamabandi Ex.P-13,P-15 and P-16, it reveals that the property came into the hands of Puran Singh from Toti Ram, his father, in essence, the plaintiffs had failed to prove that they are third immediate paternal ancestrals i.e. property came to Toti Ram from his father Jiwan Ram. Jiwan Ram would be the third paternal generation and the plaintiffs would be fourth generation, who can raise the plea of ancestral property. The aforementioned High Court Rules and Orders also came to be discussed in the judgment rendered by this Court in Gurmail Singh's case (supra).

The admission in the written statement would not change character and nature of the property being ancestral and this finding of mine is on perusal of para 10 of judgment rendered by Hon'ble Supreme Court in Valliammai Achi's case (supra)). The same reads thus:-

“But even assuming that there was some kind of election by Pallaniappa we cannot see how the nature of the property left by Pallaniappa's father would change merely because Pallaniappa's father made a will giving the residue absolutely to Pallaniappa and Pallaniappa took out probate of the

will. The property being joint family property Pallaniappa's father was not entitled to will it away and his making a will would make no difference to the nature of the property when it came into the hands of Pallaniappa. A father cannot turn joint family property into absolute property of his son by merely making a will thus depriving sons of the son who might be born thereafter of their right in the joint family property. It is well settled that the share which a co-sharer obtains on partition of ancestral property is ancestral property as regards his male issues. They take an interest in it by birth whether they are in existence at the time of partition or are born subsequently; (see Hindu Law by Mulla, Thirteenth Edition, p.249. Para 223 (2) (4). If that is so and the character of the ancestral property does not change so far as sons are concerned even after partition, we fail to see how that character can change merely because the father makes a will by which he gives the residue of the joint family property (after making certain bequests) to the son. A father in a Mitakshara family has a very limited right to make a will and Pallaniappa's father could not make the will disposing of the entire joint family property, though he gave the residue to his son. We are, therefore, of opinion that merely because Pallaniappa's father made the will and Pallaniappa probably as a dutiful son took out probate and carried out the wishes of his father, the nature of the property could not change and it will be joint family property in the hands of Pallaniappa so far as his male issues are concerned.”

Thus, the courts below, in my view have strongly relied upon the admission of Toti Ram in the previous judgment and

decree regarding nature and character of the land being ancestral.

Keeping in view the aforementioned facts, I am of the view that the courts below have gravely erred in not noticing the correct provisions of Hindu Law as has been referred to in Mulla (16th Edition) in its correct perspective. Thus, there is illegality and perversity in the impugned judgments and decrees.

Accordingly, the questions of law noticed above are answered in favour of the appellants-defendants and against the respondents-plaintiffs. The suit is dismissed.

The Regular Second Appeal stands allowed.

(AMIT RAWAL)
JUDGE

February 2, 2016
archana