

RSA No. 6175 of 2014 (O&M)

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

RSA No. 6175 of 2014 (O&M)

Date of Decision: March 04, 2016

Kamlesh Devi

...Appellant

Versus

Mangat Ram & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. R.S. Mamli, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. :

CM No.14718-C of 2014

Prayer in this application is for condonation of delay of 45 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of the applicant-appellant, the same is allowed. Delay of 45 days in filing the appeal stands condoned.

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Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Sirsa, dated 12.05.2012, whereby, the suit for declaration and for joint possession free from all encumbrances to the extent of half share as a coparcener of the ancestral land measuring 158 Kanals 3 Marlas being the half share

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of land measuring 316 Kanals 6 Marlas and 57 Kanals 5 Marlas being 1/4th share of land measuring 228 Kanals 0 Marla as detailed in the head note of the plaint, situated within the revenue estate of village Shahpuria, Tehsil and District Sirsa, with a further relief for permanent injunction restraining the respondent-defendants from either alienating or creating any encumbrance/charge over the suit land, stands dismissed, appeal against which preferred by the appellant-plaintiff has been dismissed by the District Judge, Sirsa, on 24.05.2014.

It is the contention of the learned counsel for the appellant that out of the wedlock of Mangat Ram @ Mangtu Ram (respondent-defendant No.1) and Smt. Durgawati (respondent-defendant No.7), the appellant-plaintiff was born on 26.03.1975. During the subsistence of this marriage, respondent-defendant No.1 Mangat Ram contracted marriage with one Guddi daughter of Shri Jai Lal, on 24.03.1978, which is null and void marriage in the eyes of law. Out of this void marriage, respondent-defendants No.2 to 5 were born but they are not entitled to be included in the joint Hindu family and coparcenary as she alongwith respondent-defendant No.1 would be the only coparceners. Respondent-defendant No.1 being the Karta of the family, could not have transferred his share of the land measuring 315 Kanals and 13 Marlas by way of decree of gift dated 18.08.1990 (Ex.D-3) in favour of Surjeet Singh and Krishan

Kumar, respondent-defendants No.2 and 3, respectively, as there was no legal necessity. The property being a coparcenary property, the same was inherited by respondent-defendant No.1 from Gugan Ram, the grand-father of the appellant-plaintiff, who had inherited the same from his father Mam Raj. His further contention is that even the transfer of the 1/9th share out of the land measuring 228 Kanals by Mangat Ram in favour of his mother Smt. Barji Devi, who had transferred the said land in favour of her grand-son and grand-daughters by way of Will dated 17.02.1984, is illegal and cannot sustain. His further contention is that the decree of gift dated 18.08.1990 (Ex.D-3) has not been acted upon as in the revenue records, the name of Mangat Ram still continues to exist and Mangat Ram had executed a sale deed in favour of respondent-defendant No.6 Smt. Kamlesh wife of Ghanshyam, through registered sale deed No.2242 dated 28.06.2006 as reflected in the mutation Ex.P-6, which shows that the decree of gift is a mere paper transaction and the parties have not acted upon the same. There being no legal necessity, she was entitled to the benefit of the amended Section 6 of the Hindu Succession Act, 1956, which came into existence on 20.12.2004, according to which, she is a member of the coparcenary and thus, entitled to the claim as has been made in the suit. He, on this basis, contends that the judgments and decree as passed by the Courts below being not in accordance with the pleadings and the

evidence brought on record, cannot be sustained and deserved to be set aside.

I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments.

The basic issue involved in the present case is whether the suit land is an ancestral land at the hands of Mangat Ram or is it a self-acquired land?

Although, pleadings are that the property is ancestral but there is no evidence brought on record, according to which, it can be said that Gugan Ram, who was the father of Mangat Ram, had inherited the land from his father Mam Raj. Further, it is an admitted case that Gugan Ram suffered a decree of gift dated 06.11.1969 (Ex.D-5) regarding suit land in favour of his sons Mangat Ram and Rajinder Kumar in equal shares i.e. each getting half share. On the passing of the decree dated 06.11.1969, the land at the hands of Mangat Ram and Rajinder Kuamr became their self-acquired property and it lost the character of joint Hindu coparcenary property.

In **Mohinder Kaur Vs. Pargat Singh & others, 2010(3) Recent Civil Reports, 491 (P&H)**, it has been held that if the land is transferred by way of civil decree, the acquisition of the said land at the hands of the beneficiaries becomes self-acquired property and loses the character of the joint Hindu coparcenary property. At the cost of

repetition, it may be added here that there is nothing on record except for the pleading and oral statement which would indicate that Gugan Ram, father of Mangat Ram, inherited the land from his father Mam Raj. If that be so, the property in dispute cannot be said to be ancestral one as the property so inherited has to be shown to have been so inherited through three degrees i.e. the sons, grand-sons and great grand-sons of the person who inherited it. Here only two degrees have been projected i.e. Mangat Ram and Gugan Ram. The findings, thus, recorded by the Courts below that the property is not an ancestral property, cannot be faulted with.

In the light of the above, the subsequent decree of gift dated 18.08.1990 (Ex.D-3) by Mangat Ram at the hands of Surjeet Singh and Krishan Kumar, being a self-acquired property, cannot be challenged by the appellant-plaintiff on the basis of it being an ancestral property. It is also an admitted case that 1/9th share out of 228 Kanals in the hands of Mangat Ram was transferred in favour of his mother Smt. Barji Devi, which has further been received by her grand-son and grand-daughters by way of a Will dated 17.02.1984, but this property also cannot be said to be a part of the coparcenary property as the appellant-plaintiff has failed to establish the same to be so as found above and especially in the light of the Civil Court decree dated 06.11.1969 (Ex.D-5).

The argument of the learned counsel for the appellant

that although the decree of gift dated 18.08.1990 (Ex.D-3) confers the right of ownership upon Surjeet Singh and Krishan Kumar, sons of Mangat Ram but the same has not been acted upon as the revenue entries do not reflect the same and therefore, the sale in favour of respondent-defendant No.6 of the suit land vide registered sale deed No.2242 dated 28.06.2006 cannot sustain, which is subsequent to the date of coming into force of the amended Section 6 of the Hindu Succession Act, 1956, also cannot be accepted as the land is not a coparcenary property and is a self-acquired property at the hands of Mangat Ram and therefore, he could have sold the property. In any case, even if, as per the decree dated 18.08.1990 (Ex.D-3), Mangat Ram is no more owner of the property, the grouse, if any, would be that of Surjeet Singh and Krishan Kumar, but no right accrues to the appellant-plaintiff so far as the said sale deed is concerned as she has no claim in the said land sold vide sale deed dated 28.06.2006.

It may be added here that the appellant-plaintiff has admitted in her cross-examination that respondent-defendant No.1 Mangat Ram had given ₹80,000/- to her in her marriage, which was solemnized on 29.12.1996 and therefore, it cannot be said that nothing has been received by the appellant-plaintiff at the hand of Mangat Ram.

No other point has been urged or 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 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.

March 04, 2016
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE