

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 1849 of 1988 (O&M)

Date of Decision: 03.7.2017

Mishri Lal (deceased) through LRs.

.....Appellants

Versus

Mohar Singh (deceased) through LRs. and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. M.S.Rana, Advocate for
Mr. Ashish Kapoor, Advocate
for the appellants.

Mr. Ashok Kumar, Advocate for
Mr. Sanjay Mittal, Advocate
for respondents No. 1 and 2.

ANITA CHAUDHRY, J

This is the defendants' appeal aggrieved by the reversal of the judgment and decree passed by the first Court.

It is necessary to first notice the relationship between the parties first. Sadhu Ram had four sons, Mohar Singh, Chiranji Lal, Misri Lal and Balbir. Sadhu Ram purchased land vide separate sale deeds on 4.8.1945, 7.11.1946, 5.10.1950 and 19.3.1951. Mohar Singh and Chiranji Lal filed a suit in 1981 pleading that the property was purchased by defendant No. 1 in his own name but the consideration money was pooled in by the plaintiffs and defendant No. 2 in equal shares and defendant No. 1 was a benami owner. It was pleaded that defendant No. 1 had colluded with defendant No. 2 and he wanted to grab the property. It was pleaded that defendant No. 1 suffered a decree in favour of defendant No. 2 giving the property to him and the decree was null and void. It is necessary to mention

here that the decree was passed on 20.11.1982 after the filing of the suit and the plaintiffs amended their plaint to incorporate the additional fact. The plaintiffs took an alternative plea that if the property was not found to be benami then the property may be considered as coparcenary.

The suit was contested and the written statement was filed by defendant No. 1. It was pleaded that the plaintiffs had no concern with the property and it was his self acquired property and he had purchased it from his own funds and had every right to alienate the property in the manner he liked. It was denied that the plaintiffs had contributed any amount. It was also denied that the property was coparcenary.

On the pleadings of the parties following issues were framed by the trial Court:-

- “1. Whether the suit land was purchased by the plaintiffs and defendant No. 2, and defendant No. 1 was a mere benamidar ? OPP*
- 2. Whether the plaintiffs have no locus standi to file the present suit ? OPD*
- 3. Whether the suit is not maintainable in the present form ? OPD*
- 4. Whether the defendant No. 1 is entitled to special cost under Section 35-A of CPC? OPD*
- 4-A. Whether the decree sheet and order dated 20.11.82 is liable to be set aside ? OPP*
- 4-B. If issue No. 1 is not proved, whether the property in dispute was purchased by the joint nucleus of the joint Hindu Family of the parties, if so to what effect ? OPP*
- 5. Relief”*

The trial Court gave a categoric finding that there was no evidence that the plaintiffs or defendant No. 1 had contributed any amount.

It was held that both the plaintiffs and defendant No. 2 were less than 20 years of age when the first purchase was made and they were not earning, therefore the question of any contribution did not arise and the property was the self acquired property and defendant No. 1 could use it in the manner he liked. It was held that the property was not joint property. The suit was dismissed.

Aggrieved by the judgment the plaintiff filed an appeal. The Appellate Court affirmed the findings recorded on issue No. 1 and held that the property had been purchased by defendant No. 1 and it was not benami property. It held that since the property had been purchased with the joint nucleus of the parties therefore the appellants were entitled to a share in the disputed property and the property was joint family property and defendant No. 1 had failed to lead evidence or satisfactorily explain from where he had got the funds. It was held that since it was joint Hindu family property therefore Sadhu Ram could not suffer a decree and give to his one son. The judgment of the first Court was set aside and the appeal was allowed.

Aggrieved by the reversal Mishri Lal-defendant No. 2 filed an appeal. Meanwhile Sadhu Ram (father) died and Balbir Singh was brought on record as his legal representative.

I have heard both the sides.

The submission made on behalf of the appellant is that the purchase had been made by the father from 1945 upto 1951 and the suit was filed in 1981 and the plaintiffs' plea was that the property was benami and they had also contributed. It was urged that the plea of benami had been rejected by the trial Court and that finding was affirmed by the first Appellate Court and there is no further appeal by respondents No. 1 and 2.

It was urged that the first Appellate Court wrongly held the property to be joint Hindu Family property and made a new case without there being any evidence. It was urged that the properties had been purchased when the sons were in the age group of 15-20 years and were illiterate and had never been to any school and they were not earning. It was urged that the lower Court had elaborately dealt with this issue and had given a firm finding that the property was not joint family property and there is no presumption that the family possesses joint property. It was urged that the first Appellate Court had dealt with the case as if it was the defendants who were to prove the issue, the onus of which was cast upon the plaintiffs. It was urged that when the plaintiff approaches the Court and asserts a fact, it is he, who has to prove and onus of issue No. 4-B was placed upon the plaintiffs and they have not spoken a word on it.

On the other hand the submission on behalf of respondents No. 1 and 2 was that when their father had left Rajasthan, he did not own any property and all the properties were purchased in Haryana and the sons had also contributed and this fact was stated by both the plaintiffs in their statements before the Court below. It was urged that the sons had taken the money from their relatives. The counsel had referred to the statement of Ram Kumar PW-1 and had pointed out to the fact that the witness had deposed that Chiranji had got the money from his in-laws and from his paternal aunt.

Both the Courts below had given a finding that the property was not benami. There is no further challenge to it and I do not find any infirmity in it. Therefore, the finding recorded on issue No. 1 is affirmed.

The first Appellate Court held that the property in dispute was

purchased by the joint nucleus out of the joint family funds. The onus of this issue was placed upon the plaintiffs and I find that there is absolutely no evidence. None of the plaintiffs had spoken a word that the property was joint family property. The lower Court had examined the issue at length and had given its finding which reads as under:-

“In the present case, admittedly, there was no joint property with the family with the aid of which any part of the suit property could be acquired. Para 228 of Hindu Law prescribed the mode of acquisition of joint property. The plaintiffs and defendants were residents of Rajasthan and they came in Haryana in Samat 1990 and settled in village Bhagrawa. Meaning thereby, they have settled in village Bhagrawa before 50 years ago. Further, it is also an admitted fact that they had no property when they settled in Haryana and they started doing labour work. At this stage, I would like to refer para 233(2) of the Hindu Law, which provides as under:-

“No presumption that a joint family possesses joint property. There is no presumption that family, because it is joint, possesses joint property or any property. When in a suit for partition, a party claims that any particular item of the property is joint family property, or when in a suit on a mortgage a party contends that the property mortgaged is joint family property, the burden of proving that it is so rests on the party asserting it.”

In view of the provisions of law, it is duty of the plaintiffs to prove that the suit property is joint family property because there was no joint family property of the parties at the time of purchase of the first part of the suit property with the aid of which the first part of the suit property could be purchased.

To render the property joint the plaintiff must prove that the family was possessed of some property with the income of

which the property could have been acquired or from which the presumption could be drawn that all the property possessed by the family is joint family property or that it was purchased with the joint family funds, such as the proceeds of sale of ancestral property or by joint labour. None of these alternatives is a matter of legal presumption. It can only be brought to the cognizance of a Court in the same way as any other fact, namely by evidence. There is at times indiscriminated use of the expression presumption in this context. It is to be understood to indicate those presumptions of fact which may be said to arise in considering whether the burden of proof has or has not been discharged by a party. It is not as if there is any general solvent for all cases.

Where it is established or admitted that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the presumption arises that it was joint property and the burden shifts to the party alleging self acquisition to establish affirmatively that the property was acquired without the aid of the joint family. But no such presumption would arise if the nucleus is such that with its help the property claimed to be joint could not have been acquired. In order to give rise to the presumption the nucleus must be such that with its help the property claimed to be joint could have been acquired. Whether the evidence adduced by a party is sufficient to shift the burden which initially rested on him of establishing that there was adequate nucleus out of which the acquisitions could have been made is one of fact depending on the nature and extent of the nucleus. An important element for consideration is the income which the nucleus yielded.

In the present case, there is no cogent evidence to show as to how the plaintiffs and defendant No. 2 earned money making a sufficient nucleus for purchasing any part of the suit property. Not even a single PW stated about the annual

income or monthly income of any of the plaintiff or defendant

No. 2. *Cogent evidence is required to prove that there was a sufficient nucleus out of which any acquisition could be made. As the burden of proving this fact was on the plaintiffs, so, the plaintiffs were bound to produce the cogent evidence to prove the existence of nucleus out of which any acquisition could be made. In the absence of any such evidence, the unescapable conclusion will be that there was no nucleus with the joint family out of which any acquisition could be made. For this view, I refer AIR 1965 S.C. Page 289 wherein it has been held that :-*

“Where in fact at the date of acquisition of a particular property the joint family had sufficient nucleus for acquiring it, the property in the name of any member of the joint family should be presumed to be acquired from out of family funds and so to form part of the joint family property, unless the contrary is shown.”

From the evidence placed on the file, it does not appear that the joint family had any property at the time of acquisition of the first purchase of the suit land and has sufficient nucleus from which the properties could be acquired. In view of the above discussion, the plaintiffs have failed to prove the joint nucleus out of which the above suit property was purchased. Hence, this issue is decided against the plaintiffs and in favour of the defendant No. 1.”

According to Hindu Law, the classification can be made into two categories i.e. (i) joint family property and (ii) separate property.

1. Joint family property- Joint family property may be divided according to the sources from which it comes i.e. ancestral properties. (Refer to para 223-25 of Hindu Law).
2. Separate property - Separate property of coparceners thrown into common stock (Para 227 of Hindu Law).

The sale deeds placed on record show that the purchases have been made by the father. The case of the plaintiffs was that they had pooled in their resources and it was joint family property. There is no evidence to prove that they had contributed any amount. The duty was cast upon the plaintiffs to prove that the land had been purchased with the aid of some resources which were available from the common stock. They had to lead evidence to show how the property became joint family property. It is a case of no evidence. The trial Court had minutely examined the statement of witnesses and had rightly rejected it and there is no need to reproduce it here.

Whenever a property whether separate or self acquired of a coparcenary is thrown into the common stock voluntarily with the intention of abandoning, it is only then the members of the joint family can claim a right for control over the joint estate by means of operation of the doctrine of blending and it becomes joint family property. There are certain pre-conditions for blending which are absolutely missing in this case. There is no evidence that the property was acquired by the joint labour put in by the sons. Therefore, the finding recorded by the first Appellate Court with respect to the nature of the property has to be set aside. None of the plaintiffs had stated a word on the issue and the first Appellate Court had gone wrong in upsetting the well reasoned finding recorded on issue No. 4.

The appeal is allowed. The decree passed by the first Appellate Court is set aside. The decree passed by the lower Court is affirmed and the suit is dismissed.

(ANITA CHAUDHRY)
JUDGE

July 03, 2017

Gurpreet

Whether speaking/reasoned : Yes

Whether reportable : No