

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

Date of Decision-11.01.2017

1. RSA No.702 of 1990(O&M)

Bhajan Singh ... Appellant

Versus

Santokh Singh and others ... Respondents

2. RSA No.5506 of 2003(O&M)

Santokh Singh ... Appellant

Versus

Bhajan Singh ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.S. Swaitch, Advocate
for the appellant in RSA No.702 of 1990 and
for the respondent in RSA No.5506 of 2003.

Mr. K.S. Boparai, Advocate
for the respondents in RSA No.702 of 1990 and
for the appellant in RSA No.5506 of 2003.

RAJ MOHAN SINGH, J.

[1]. Vide this common judgment, RSA No.702 of 1990 and RSA No.5506 of 2003 are being decided as both these appeals have arisen out of common cause of action. Since main issue is involved in RSA No.702 of 1990, therefore, facts are being culled out from the said appeal.

[2]. Brief facts are that the plaintiff-Santokh Singh son of Saun Singh son of Dharam Singh filed a suit for joint possession against his brother Bhajan Singh, sisters Gurdev Kaur and Jarnail Kaur respectively. The suit was in respect of agricultural land and a

residential house situated at village Powat, Tehsil Samrala, District Ludhiana as described under headnote Nos.(i), (ii) and (iii) of the plaint.

[3]. Lal Singh was great grand-father of the parties. Dharam Singh son of Lal Singh was grand-father of the parties. Plaintiff alleged that disputed properties are joint Hindu family coparcenary properties. Dharam Singh was owner of some ancestral agricultural land in village Bomb, Tehsil Samrala, District Ludhiana and also in Pakistan i.e. Bijapur Chak No.473, Tehsil Samundri, District Lyallpur (Pakistan). After partition of the country, the agricultural land as shown in headnote Nos.(ii) and (iii) of the plaint was allotted to Dharam Singh in lieu of land left by him in Pakistan. Land shown in headnote No.(i) of the plaint is joint Hindu family coparcenary property of the plaintiff, defendant No.1 and their father-Saun Singh. Dharam Singh had four sons namely Saun Singh, Mangal Singh, Gurnam Singh and Bhagwan Singh. Saun Singh died on 18.10.1985. Saun Singh had two sons i.e. plaintiff, defendant No.1 and two daughters namely Gurdev Kaur and Jarnail Kaur. After the death of Dharam Singh, property was equally inherited by Saun Singh, Mangal Singh, Gurnam Singh and Bhagwan Singh. Bhagwan Singh pre-deceased Dharam Singh, therefore, his 1/4th share was inherited by his sons Mewa Singh, Mal Singh and Bahadur Singh. Dharam Singh died in the year 1953. Mutation No.3628 was sanctioned on 30.01.1953 in respect of land in village

Powat. In the same way, all the sons of Dharam Singh inherited his estate in village Bomb.

[4]. Saun Singh sold his share of land in village Bomb vide registered sale deed dated 11.06.1959 and purchased the land in village Powat out of the sale proceeds of this ancestral property. Therefore, property shown in headnote No.(i) was claimed to be joint Hindu family coparcenary property of the plaintiff, defendant No.1 and their father-Saun Singh.

[5]. Plaintiff alleged that the properties were joint Hindu family coparcenary properties and Saun Singh alone being Karta of the joint Hindu family was not absolute owner and had only limited right. Defendant No.1 set up a Will dated 30.04.1985 and got mutation No.5378 sanctioned on 30.06.1986 on the basis of said Will.

[6]. The suit was contested by defendants No.1 and 3. Defendant No.2 did not contest the suit despite service and was proceeded against ex parte. Will dated 30.04.1985 was claimed to be validly executed by Saun Singh in favour of defendant No.1 and resultant mutation was also claimed to be valid. The land was not admitted to be joint Hindu family coparcenary property, rather the same was claimed to be self-acquired property of Saun Singh. Saun Singh was living with Bhajan Singh-defendant No.1. Plaintiff was a few hours old when his mother died in Pakistan. Plaintiff was

brought up by his maternal aunt. Plaintiff was separated from about 15 years ago and was given one room in village Powat.

[7]. After completion of pleadings, both the parties went to trial on the following issues:-

“1. Whether the plaintiff has no locus standi to file the present suit? OPP

2. Whether the impugned Will dated 30.04.1985 is illegal and void? OPP

3. Whether the suit land is joint Hindu family coparcenary property? OPP

4. Whether the plaintiff is entitled to possession jointly with the defendants? OPP

5. Relief.”

[8]. Both the parties led their respective evidence. Plaintiff got himself examined as PW 1 besides examining Swaran Singh, Head Registration Clerk as PW 2, Jaswant Singh as PW 3, Amar Singh attesting witness of sale deed Ex.P1 as PW 4, Niranjn Singh as PW 5 and Gurdev Kaur as PW 6. Plaintiff also produced documentary evidence on record. On the other hand, defendant No.1-Bhajan Singh got himself examined as DW 1 besides examining Amrik Singh, Deed Writer/Scribe of Will as DW 2, Narinderjit Singh, attesting witness of the Will as DW 3, Gurdev Singh as DW 4, Jarnail Kaur as DW 5 and Malkiat Singh as DW 6.

[9]. After appraisal of the evidence, trial Court held that the property was joint Hindu family coparcenary property on the basis

of evidence on record and the plaintiff had all the locus standi to file the suit in question. Execution of Will dated 30.04.1985 was also proved. Since the property was held to be joint Hindu family coparcenary property of the plaintiff and defendant No.1, therefore, it was held that there was community of interest and unit of possession in respect of suit land as member of joint Hindu family had no definite share in the coparcenary property. A coparcener had an undivided interest in the property which was liable to be varied i.e to be enlarged by death and to be diminished by birth in the family. Interest in the coparcenary accrues to a son from the date of birth in the family and the said interest is equal to the share of his father. With the coming force of Hindu Succession Act, 1956, it was held that undivided interest of a coparcener in the coparcenary property can be subjected to transfer by way of Will or other testamentary dispositions. Section 30 of Hindu Succession Act permits the disposition by a Hindu male in respect of coparcenary property by way of Will.

[10]. Trial Court held that the execution of Will was proved, therefore, the Will was valid only to the extent of share of father Saun Singh. Since, there was no partition between the father and the sons, therefore had there been any partition between Saun Singh and his two sons during his lifetime, each of them would have got 1/3rd share in the suit land. Therefore, Will executed by Saun Singh was held to be valid to the extent of 1/3rd share in favour of defendant No.1 to the exclusion of other legal heirs. The

suit was partly decreed vide judgment and decree dated 08.02.1988 passed by Sub Judge, 1st Class, Samrala.

[11]. Plaintiff and defendant No.1 feeling dissatisfied with the judgment and decree of the trial Court filed their respective appeals before the lower Appellate Court. Both the appeals were decided by the Additional District Judge, Ludhiana vide common judgment dated 30.01.1990. Lower Appellate Court accepted the appeal filed by the plaintiff on the premise that though the properties were proved to be joint Hindu family coparcenary properties and there was no evidence of disruption of jointness of the properties, but the Will was proved to be shrouded with suspicious circumstances inasmuch as that there was no reference of plaintiff in the Will, nor any reasons were given in the Will as to why the plaintiff and other daughters of Saun Singh were disinherited and were deprived of their natural right of inheritance. The Will was executed on 30.04.1985 and Saun Singh died on 18.10.1985. On that premise, it was held that Will was not valid and the mutation sanctioned on the basis of said Will was also held to be illegal. The appeal filed by the plaintiff was accepted whereas the appeal filed by defendant No.1 was dismissed. The suit filed by the plaintiff was decreed in toto. RSA No.702 of 1990 has been filed by defendant No.1 against the judgment and decree of the lower Appellate Court.

[12]. I have heard learned counsel for the parties and have also perused the material on record.

[13]. Though no substantial question of law was framed, but this Court in view of nature of dispute involved between the parties proceeded to consider the following substantial questions of law which according to this Court would go to the roots of the case:-

“1. Whether disinheritation of defendant No.1 and other sisters of the parties would alone be a valid ground to hold the Will to be shrouded with suspicious circumstance in the absence of other circumstances particularly when the execution of Will has been proved with reference to evidence of scribe and attesting witnesses in terms of Section 68 of the Indian Evidence Act?

2. Whether admission made by the plaintiff in respect of Will in connected RSA No.5506 of 2003 would be a clinching evidence to reverse the findings of the lower Appellate Court in the present appeal?

[14]. At interlocutory stage, at one point of time, this Court while declining the interim relief to the appellant had observed that since the suit was for joint possession, therefore, no executable decree could have been passed, however, on the submission of learned counsel for the respondents, it was recorded that the respondents would take possession in accordance with law. The respondents would not alienate the property even after finalization of the partition proceedings during pendency of the appeal.

[15]. Learned counsel for the appellant vehemently submitted that the property were situated in three villages. The property situated in village Powat was purchased by Saun Singh by selling

his property in village Bomb. 24 kanals of property was purchased. Property of village Bomb was ancestral in nature. Second property was 120 kanals of land at village Powat. Third property was 9 kanals of land at village Powat. Fourth property was in the shape of residential house. Both the Courts below have wrongly held that the property was ancestral joint Hindu family coparcenary property on the basis of jamabandi only. No excerpt (Intakhab) was prepared. The property was to be proved in terms of three lineal male descendants. The jamabandis on record would cover the relationship upto Dharam Singh only and would not go further to cover Lal Singh. There was no evidence on record to show the property being ancestral in the hands of Lal Singh. Since the property has not devolved upon the parties from three lineal male descendants, therefore, it cannot be held to be ancestral joint Hindu family coparcenary property. The pedigree table cannot be a document of inheritance as it would have shown the relationship only.

[16]. Learned counsel further argued that the lower Appellate Court has discarded the Will solely on the basis that the plaintiff and other sisters have been deprived of their lawful entitlement without there being any reference in the Will and virtually they have been discarded from their property.

[17]. Learned counsel relied upon **Mihan and another Vs. Inder and another, 2008(3) RCR (Civil) 124, Veerpal Kaur Vs.**

Sardool Singh and others, 2016(2) PLR 335 and **Chhajju Ram Vs. Kapuria Ram, 1983 CurLJ 338** to contend that the Hindu Succession Act has not abolished joint Hindu family with reference to rights of members of Mitakshara coparcenary, except in the manner and to the extent as mentioned in Sections 6 and 30 of the Hindu Succession Act. A person inheriting property from his three immediate paternal ancestors holds it and must hold it, in coparcenary with his sons, son's sons and son's son's sons, but as regards other relations he holds it, and is entitled to hold it, as his absolute property.

[18]. Learned counsel for the respondents has refuted the contention on behalf of the appellant in connected appeal by giving meaning to the words of alleged admission. Learned counsel contended that execution of Will was never admitted in the context of its execution, validity and genuineness. In the absence of Will, plaintiff, defendant No.1 and their father would get 1/3rd share each. After the death of Saun Singn, 1/3rd share of Saun Singh would be divided into four parts. The statement made in subsequent suit was not *per se* admissible as it did not satisfy the ingredients of additional evidence which otherwise required three riders to be satisfied.

[19]. Firstly, the evidence was tendered in the trial Court, but not admitted or the same was not previously known or which could not be produced despite due diligence. Though the Court may at

any stage of the suit recall any witness who has been examined or allow any party to adduce evidence if the Court is satisfied that adducing of such evidence would enable the Court to decide the controversy in an effective manner. Learned counsel submitted that as per sale deed dated 11.06.1959 Ex.P2, land at village Bomb was sold and land at village Powat was purchased vide sale deed dated 30.07.1959 (Ex.P1). As per jamabandi for the year 1941-42 Ex.P3, the land in village Bomb was ancestral in nature which was further proved from the fact that as per jamabandi for the year 1946-47 Ex.P4, land was situated in Pakistan and property in village Bomb as per jamabandi for the year 1941-42 Ex.P6 was proved to be ancestral inasmuch as that the property was devolved upon Saun Singh from Dharam Singh as per Ex.P19. The mutation Ex.P11 was in respect of estate of Dharam Singh and thereafter, all the sons of Dharam Singh inherited the property as per mutation No.531 Ex.P12.

[20]. The pedigree table has presumption of correctness and truth in the absence of any evidence to rebut it. The presumption of truth goes parallel to the record of right which is maintained in due course of public duty. The ancestral joint Hindu family coparcenary property can be seen from the fact that according to allotment No.39, Dharam Singh was allottee of land in village Powat in lieu of land left by him in Pakistan. Reference of this land was made in jamabandi for the year 1959-60 Ex.P5. Pedigree table Ex.P13 proved the fact that Dharam Singh inherited this land from his

father Lal Singh. Mutation Ex.P11 also corroborated the aforesaid facts. Khatauni paimaish Ex.P15 and khatauni istemal Ex.P16 also corroborated the aforesaid facts. Therefore, from voluminous revenue record, the findings recorded by the Courts below in respect of nature of land being joint Hindu family coparcenary remained unshattered. There was no evidence of disruption of jointness of the properties between the parties.

[21]. The application in the context of showing that there was an admission of the plaintiff in connected appeal and therefore, the statement of Santokh Singh while appearing as PW 2 in Civil Suit No.483 dated 03.10.2000 titled as Santokh Singh Vs. Bhajan Singh decided on 03.04.2003 by the trial Court was sought to be brought on record by means of additional evidence. The aforesaid statement is part of evidence of RSA No.5506 of 2003 which is being decided along with the present appeal. The admission made by Sher Singh and Santokh Singh while appearing in the said suit as PW 1 and PW 2 are sought to be produced as additional evidence herein.

[22]. Apparently, Dharam Singh died in the year 1953. Plaintiff-Santokh Singh was 43 years of age when his statement was recorded on 09.11.1987 by the trial Court in rebuttal. Three generations were in existence. Similarly, Bhajan Singh was 45 years of age at the time of his statement as DW 1 on 11.05.1987.

The concept of Mitakshara coparcenary cannot extinct with the

commencement of the Hindu Succession Act as the principles of Mitakshara coparcenary are embedded in the Hindu Law jurisprudence and continue to apply even after 1956 Act, except in the manner as provided under Sections 6 and 30 of the Hindu Succession Act.

[23]. The controversy involved herein is not akin to the controversy involved in **Mihan and another case (supra)**, however, it can be appreciated that how it can be visualized that Saun Singh was competent to bequeath his share in the joint Hindu family coparcenary property in favour of defendant No.1 as the plaintiff and defendant No.1 had interest in the coparcenary property from their dates of birth in the family and the interest in favour of each of the son of Saun Singh was equal to the share of Saun Singh himself. By virtue of Section 30 of the Hindu Succession Act, 1956, disposition by way of Will by Hindu male in a Mitakshara property was permitted, therefore, validity of the Will cannot be discarded as a whole. Therefore, Saun Singh was competent to bequeath his undivided interest in the coparcenary property to the extent of his own share as he along with two sons formed a Hindu undivided family.

[24]. In **Mahesh Kumar (dead) by LRs Vs. Vinod Kumar and others, 2012(2) RCR (Civil) 493**, Hon'ble Apex Court has held that disinheritance of son in the Will alone is not a ground for presuming the Will to be shrouded with suspicious circumstances

unless and until other attending circumstances have also come on record to show that Will was in fact shrouded with suspicious circumstances.

[25]. The possession of Bhajan Singh even if, admitted to be over the entire property that itself would not mean that Bhajan Singh was owner of the property. In the absence of Will to be the entire property, parties would be co-sharer in the suit land, concept of co-sharership cannot disentitle the plaintiff from claiming deemed possession based on title. As an interim measure, co-sharer in exclusive possession can oust the other co-sharers from interfering in the possession subject to final partition, therefore, possession of Bhajan Singh alone over the entire property would be of no consequence. Even though, issue No.2 gave negative onus. The contents of para No.6 of the plaint read with issue No.2 would show that the onus was fixed on the plaintiff in respect of Will which was set up by the defendant. Since both the parties knew each others case, therefore, issue was inconsequential, only competence of Saun Singh was to be seen for the purposes of executing a valid Will.

[26]. Evidently, Will Ex.D1 was proved by statement of Scribe who appeared as DW 2. Will was got registered in the office of Sub Registrar. DW 4 Gurdev Singh also corroborated the factum of due execution of Will. Once the execution of Will was proved, the only exception left whether the Will was valid to the entire suit property

or was valid to the extent of share of Saun Singh in undivided interest of the copacenary. Since, plaintiff, defendant No.1 and Saun Singh were having undivided interest to the extent of 1/3rd share each, therefore, Saun Singh was competent only to Will away his share to the extent of 1/3rd share in the property.

[27]. The substantial questions of law as framed by this Court for consideration revolves around the fact that when due execution of Will was proved and there were no other attending circumstances to arrive at irresistible conclusion that the Will was outcome of any fraud or misrepresentation, then the disinheritance of the legal heir alone would not be a sufficient ground to discard the Will in view of ratio laid down in **Mahesh Kumar (dead) by LRs case (supra)**. To this extent, I am of the considered opinion that the disinheritance would not give any explanation of presumption of ingenuinenity of Will in the absence of other circumstances. In my considered opinion, the reasoning given by the trial Court is more realistic, then the one given by the lower Appellate Court.

[28]. The proposed additional evidence i.e. subject matter of statement in RSA No.5506 of 2003 is only to show validity of Will allegedly admitted by the plaintiff in a subsequent suit. Since on the basis of evidence, this Court has concluded that the decision of the trial Court is upheld, therefore, there is no reason to allow such an application because this Court has concluded that Will was valid to the extent of 1/3rd share. Even if, it has to be taken that Will was

executed in favour of defendant No.1, the same would be valid to the extent of 1/3rd share of Saun Singh in coparcenary property.

[29]. In view of aforesaid, RSA No.702 of 1990 is accepted, therefore, impugned judgment and decree dated 30.01.1990 passed by the lower Appellate Court is set aside and that of trial Court dated 08.02.1988 is restored. Consequently, second appeal i.e. RSA No.5506 of 2003 is dismissed. Application for additional evidence i.e. CM No.13730-C of 2016 is also disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

11.01.2017
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No