

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

RSA No.1730 of 2000 (O&M)

Date of Decision.24.05.2017

Mukhtiar Kaur

.....Appellant

Vs

Balbir Kaur and others

.....Respondents

Present: Mr. S.S. Joshi, Advocate
for the appellant.

Mr. J.S. Brar, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court whereby the suit seeking declaration that she being the daughter of Mangal Singh having right by birth in the coparcenary property, is entitled to 1/4th share and permanent injunction restraining from selling the land.

Mr. Joshi, learned counsel appearing on behalf of the appellant-plaintiff submits that the appellant had instituted the suit stating wherein that Mangal Singh had died long time back and she being daughter, has share by birth in respect of land measuring 133 bighas 3 biswas and after death of Mangal Singh, Phimo and Bhan Singh came in possession of the aforementioned land. Phimo and Bhan Singh also expired and defendant No.1 is the widow of Bhan Singh and defendant Nos.2 to 6 are daughters and sons. The possession of the land remained with Phimo and Bhan Singh and thereafter, the aforementioned legal heirs. The status of the land, being coparcenary, has been proved through the excerpt Ex.P1 brought through

the testimony of the revenue official. The plaintiff came to know that Phimo and Bhan Singh had sold most of the land and only land measuring 32 bighas 15 biswas was left. Even the mutation of the land in their favour was effected on 23.05.1961, therefore, death of Mangal Singh has to be construed from such date. The plaintiff requested the defendants many times to admit her claim but having failed to do so, the suit was filed in January, 1995.

The defendants contested the suit by filing the written statement, taking the objection that the suit is not maintainable and barred under the provisions of Order 23 Rule 1 CPC and also constructive *res judicata*, much less, under the provisions of Order 2 Rule 2 CPC.

In support of averments made in the plaint, Excerpts Ex.P1 to Ex.P22, revenue record and judgment rendered in Civil Suit No.137 of 1991 titled as “Gurjant Singh Vs. Smt. Phimo, Ex.P23 had been brought on record to establish that plaintiff, being the daughter of Mangal Singh, has right by birth. In support of her contentions, relied upon judgment rendered by Hon'ble Supreme Court in **Parshotam Singh (dead) through LRs Vs. Harbans Kaur and another 1997(1) ACJ 215** that whenever a Karta dies, all the coparceners have right by birth in the property. The trial Court on preponderance of the evidence, both oral and documentary, decreed the suit but the lower Appellate Court committed illegality and perversity in setting aside the judgment and therefore, present appeal, involves following substantial questions of law as culled out in the memorandum of appeal:-

- (i) Whether Mukhtiar Kaur daughter of Mangal Singh would have a right by birth in the coparcenary property on the death of her father?

(ii) Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity?

On the contrary, Mr. Brar learned counsel appearing on behalf of the respondents submits that there is categoric averment in the written statement by replying to the contents of para No.2 of plaint that Mangal Singh died 42 years back and had drawn attention of this Court to the corresponding paragraph of the replication wherein it has been stated that the said paragraph did not need any reply, thus, for all intended purposes, civil suit and written statement/replication filed in the year 1995 would reveal that Mangal Singh had died before the commencement of the Hindu Succession Act.

In order to further support the aforementioned argument, reference had been made to jamabandi Ex.P2 to show that Mangal Singh had inherited the property from his father Gujjar Singh. He further drawn attention of this Court to Section 6 of the Hindu Succession Act to contend that married daughter does not have a right by birth in the coparcenary property as the amendment has been caused only w.e.f. 9.9.2005 and therefore, married daughter would not have right, thus, urges this Court for upholding the judgment rendered by the lower Appellate Court.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Joshi. The case of the appellant-plaintiff would have been on better footing, had there been evidence that Mangal Singh died intestate and the property at his hands was self-acquired property. In that eventuality, on succession, all the legal heirs would have had a share by way of natural succession i.e. in the absence of testamentary disposition. I would be

failing in my duty by not referring to Section 6 of the Hindu Succession

Act:-

“6 Devolution of interest in coparcenary property. —*(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005*, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—*

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—*

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation. —For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:*

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect—*

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation. —For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.*

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation. —For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.]

It leaves no manner of doubt that married daughter does have right by birth in the coparcenary property and that right has only enured/arisen after amendment i.e. w.e.f. 09.09.2005. There is no dispute to the ratio decidendi culled out in the judgment cited supra but it was a case where the dispute was amongst the siblings of the deceased, who had inherited the property from three generations, much less, property at his hands was a coparcenary whereas the facts revealed aforementioned are totally different as the appellant is none-else but a married daughter.

In my view, the trial Court had committed a fallacy and illegality in decreeing the suit, thus, the judgment and decree rendered by the lower Appellate Court is perfectly legal and justified. The substantial questions of law raised above are answered in favour of the defendants and against the plaintiff.

Resultantly, the judgment and decree of the lower Appellate Court is upheld. The appeal stands dismissed.

It has been brought to the notice of the Court that while the

appeal was admitted, certain amount i.e. mesne profit was deposited by the defendants before the lower Court or this Court. The same is ordered to be refunded to the respondents-defendants. In case, the amount so deposited has been released in favour of the appellant-plaintiff, she is directed to refund the same. Let a decree of this order be framed. In case the amount is not refunded as directed by this Court to the respondents-defendants, they shall be at liberty to seek execution of the same.

(AMIT RAWAL)
JUDGE

May 24, 2017
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No