

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

RSA No.3731 of 2011 (O&M).
Decided on:-March 21, 2017.

Sushil Kaur (deceased) through her LR Rajbir Singh Rai.

.....Appellant.

Versus

Kartar Singh Rai and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Malkeet Singh, Advocate
for the appellant.

Mr. Sudhir Mittal, Advocate
for respondent No.1.

HARI PAL VERMA, J.

Appellants-defendants (hereinafter mentioned as the defendants) have filed the present regular second appeal against the judgment and decree dated 26.04.2011 passed by learned Additional District Judge, Jalandhar whereby their appeal against the judgment and decree dated 29.01.1997 passed by learned Additional Civil Judge (Senior Division), Jalandhar, was dismissed.

Briefly stated, the respondent No.1-plaintiff had filed a suit for partition of the joint Hindu family property comprising a residential house, located at Abadi of village Nurpur, Tehsil and District Jalandhar as per the

site plan referred in the head note of the plaint. Gian Singh Rai was the original owner in possession of the suit property. The plaintiff and defendants are the children of Gian Singh. The suit property is a residential house and the plaintiff had filed suit for declaration against his brothers and sisters for partition of the property in dispute by way of separate possession on the ground that the property in the hands of Gian Singh Rai is a joint Hindu family property. Therefore, it was a coparcenary property as the same was allotted to him (i.e. Gian Singh) in lieu of the ancestral property left by him in Pakistan at the time of partition of the country in the year 1947. To corroborate this fact, A Sanad No.5 dated 09.12.1955 was issued. Gian Singh Rai died on 08.06.1981. However, before his death, he made a declaration dated 18.02.1970 by which he had thrown the suit property in hotchpotch declaring the same to be a joint Hindu family property. The share of the coparceners and successors of late Gian Singh Rai in the residential house is detailed in para No.3 of the plaint. The plaintiff has claimed 1/25th share in the said house and has prayed for partition of the same on the ground that differences have arisen between the brothers and it is not possible to enjoy the property in question in joint manner.

While filing the written statement, the defendants have denied that late Gian Singh Rai left any joint Hindu family property in Pakistan or site Nos.20, 21, 17 and 171 situated at village Nurpur were ever allotted to said Gian Singh Rai. All the properties in the hands of Gian Singh Rai were his self-acquired properties. It has been denied that Gian Singh Rai ever built any residential house, now in dispute. It has further been denied that the

property in question is in common pool, making it to be a property of joint Hindu family. No such declaration dated 18.02.1970 was made by Gian Singh Rai and such declaration is absolutely false and fabricated. It has been pleaded that the plot underneath the house in question was previously owned by Gian Singh Rai, father of the parties more than 30 years back and it is defendant No.1, who has constructed his house by spending enough money from his personal pocket without any objection from Gian Singh Rai. Ever since the construction of the house in dispute by defendant No.1, he has been in continuous and peaceful possession of the house and has become exclusive owner of the property in dispute by way of uninterrupted, continuous and hostile possession. The defendants No.2, 3 and 4 have also claimed that defendant No.1 is owner of the house in dispute on account of adverse possession.

On the basis of pleadings of the parties, the trial Court formulated the following issues:

1. Whether the suit property was joint Hindu property in the hands of Shri Gian Singh, as alleged in para No.3 of the plaint? OPP
2. Whether plaintiff has got 6/25 share in the suit property and entitled to partition of his share? OPP
3. Whether the suit is time barred? OPD
4. Whether plaintiff is stopped by his act and conduct from filing the present suit? OPD
5. Whether defendant No.1 has become exclusive owner of the suit property, by adverse possession? OPD
6. Whether suit is not properly valued for the purposes

of court fee and jurisdiction? OPD

7. Whether written statement filed by legal heirs of defendant No.4, deceased, is not valid and proper, if so, its effect? OPP
8. Relief.

One of the crucial issue framed by the trial Court was as to whether the suit property was joint Hindu family property in the hands of Gian Singh Rai. To this, the trial Court has returned a finding that the property in suit was joint Hindu family property in the hands of Gian Singh Rai in which the plaintiff has got 6/25th share and he is entitled for this share by way of partition. But when the defendants are not agreeing for partition, the suit has been filed. It was held that the defendant No.1 Surjit Singh (since deceased and represented by the appellants herein) never became owner of the house in dispute on account of adverse possession as in order to claim ownership by way of adverse possession, it was incumbent upon defendant No.1 Surjit Singh to pin point the exact date, month and year of commencement of such adverse possession against the rightful owner. Thus, merely because the house in dispute was constructed by the defendant No.1 Surjit Singh about 30-32 years back and he lived alone in the house ever since the date of its construction till his death, it cannot be inferred that the defendant No.1 became exclusive owner of the house in question by way of adverse possession. The defendant No.1 was required to prove by leading positive evidence of credible nature to prove that he was in continuous, uninterrupted and hostile possession of the house in dispute for the last more than 12 years to the knowledge of the rightful owners. But since these

elements were missing, the trial Court, vide judgment and decree dated 29.01.1997 decreed the suit of the plaintiff for possession by way of partition of his share in the property fully detailed in the head note of the plaint.

Aggrieved with the aforesaid judgment and decree passed by the trial Court, the defendants, namely, Sushil Kaur, Rajbir Singh and Bharat Bir Singh preferred an appeal before the lower appellate Court, but the same was dismissed by learned Additional District Judge, Jalandhar vide judgment and decree dated 26.04.2011.

It is in the aforesaid circumstances, the appellants-defendants, namely, Sushil Kaur and Rajbir Singh Rai have approached this Court by way of present regular second appeal. However, during pendency of the present appeal, appellant Sushil Kaur has died and now she has been represented by her legal representative Rajbir Singh Rai.

Following law points have been raised by the appellants-defendants:

- i. Whether the nature of the property in the hands of late Gian Singh Rai is proved from the evidence lead by the respondent/plaintiff as joint Hindu family property on the basis of affidavit (Annexure PW8/7)?
- ii. Whether both the Courts below have rightly applied the doctrine of blending of the separate property of late Gian Singh into joint family property as envisaged under para Nos.2 to 7 of the Hindu laws when the joint property is purely a creature of Hindu Law and those who own it are called coparceners?
- iii. Whether the learned Courts below have rightly considered the doctrine of perfection of title by

adverse possession in the case in hand?

- iv. Whether the final decree of partition passed during the pendency of the appeal challenging the preliminary decree rendered the appeal as infructuous?

Learned counsel for the appellant-defendant has argued that the Courts below have committed gross error in law while deciding issue No.1 in favour of the respondent No.1-plaintiff, holding that the land in the hands of late Gian Singh Rai was joint Hindu family property without there being any evidence to prove that there was Hindu coparcenary property and Gian Singh Rai was Karta of the house in question and the same was put in the Hindu coparcenary property by him. Gian Singh was a common ancestor of the parties. Simply because Gian Singh Rai had thrown the property in dispute into common stock and the same acquired the characteristic of joint Hindu family property by the operation of doctrine of blending, it cannot change the very character of the property that it is a coparcenary property.

He has further argued that the Courts below have fallen in manifest error by deciding issue No.5 against the appellant-defendant. All the ingredients of perfection of title by way of hostile and adverse possession were pleaded by the appellant. The plot under the house in question was allotted to late Gian Singh Rai, but the construction was raised by late Surjit Singh Rai, who is predecessor-in-interest of the appellant, without there being any contribution either from the respondent-plaintiff or from other respondents-defendants. In fact, late Gian Singh Rai had constructed separate house by the side for Rai Cold Storage and he lived

there throughout his life till his death on 08.06.1981. The appellant has been non-suited merely on the ground that the defendants have not pleaded the date and year or any other overt act denying the title of late Gian Singh Rai in the house in question so as to claim ownership by way of adverse possession.

On the other hand, learned counsel for the respondent No.1-plaintiff has argued that there is no illegality in the well-reasoned judgments and decrees passed by the Courts below. Since the appellant-defendant has failed to establish the very ingredients of adverse possession, the suit property has rightly been considered as joint Hindu family property, which is subject to partition by each of the coparcener. He has further contended that the present suit has emanated from the preliminary decree and after passing of the preliminary decree of partition of the house in question, a final decree has been passed by the lower appellate Court during pendency of the appeal. Even on the basis of the decree so passed, the proposed partition has already been made absolute and the execution proceedings are complete.

I have heard learned counsel for the parties.

It is not disputed that the property was owned by late Gian Singh Rai and the appellant-defendant as well as the respondent-plaintiff are the successors-in-interest of said Gain Singh Rai. Therefore, the parties are closely related to each other and they are covered by the law of succession. The only claim as put forward by the appellant-defendant is that he has become owner of the suit property by way of adverse possession, but the same has rightly been rejected by the Courts below. It is the case of the

appellant that defendant No.1 late Surjit Singh Rai had become owner of the suit property by adverse possession, but the defendant No.1 has neither pleaded nor proved any exact date, month or year of commencement of such adverse possession against late Gian Singh Rai. In order to prove his adverse possession, the defendant No.1 had examined two witnesses, namely, Bakshi Ram (DW2) and Resham Singh (DW3). Both these witnesses have deposed that the house over the land of Gian Singh Rai was constructed by defendant No.1 Surjit Singh Rai about 30 years back and since then, he is in continuous possession of the same. Merely because the defendant No.1 had constructed the house over the property of his father Gian Singh Rai, he cannot claim ownership on the suit property by way of adverse possession, particularly in the absence of any specific averment regarding exact date, month or year of commencement of such adverse possession.

Even otherwise, on the basis of final decree, so passed during the pendency of the appeal before the lower appellate Court, the execution proceedings have been completed. Therefore, having regard to the facts and circumstances of the case, when there is a concurrent finding of facts recorded by both the Courts below that the suit property is joint Hindu family property and the house in question was Hindu Undivided Family (HUF) property in the hands of late Gian Singh Rai, the predecessor-in-interest of the parties, in which the respondent No.1-plaintiff has got 6/25th share to which he is entitled to partition, no interference is warranted.

No substantial question of law arises in the present regular second appeal.

Therefore, affirming the impugned judgments and decrees passed by the Courts below, the instant regular second appeal, being devoid of any merit, is dismissed.

March 21, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No