

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

SAO No.2 of 2013 (O&M)

Date of Decision: 19.09.2017

Sohan Singh

.....Appellant

Vs

Bhoop Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Arun Singla, Advocate
for the appellant.

Mr. S.K. Gautam, Advocate
for respondent No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. The appellant has assailed the order dated 30.11.2012 passed by the Addl. District Judge, Panipat vide which the case was remanded to the trial Court after allowing the amendment in the written statement.

[2]. Brief facts are that plaintiff/Sohan Singh filed a suit for declaration and possession on the ground that father of the plaintiff namely Nafe Singh/defendant No.3 was the Karta of joint Hindu family. Land measuring 8 Kanals ancestral joint Hindu family property was in the hands of defendant No.3. Defendant No.3 was under the influence of defendant Nos.1 and 2 and, therefore, he illegally executed and registered relinquishment deed dated 12.11.2002 in favour of defendant

Nos.1 and 2 without consideration and without any legal necessity. The said relinquishment deed was claimed to be illegal, null and void in the suit.

[3]. Defendant Nos.1 and 2 contested the suit on all counts. On merits it was submitted that when the plaintiff was minor, he was living under the care and custody of his mother and father i.e. defendant No.3. Parents of the plaintiff were having adverse interest against the rights of the minor plaintiff and now plaintiff has attained majority. The relinquishment deed executed by defendant Nos.1 and 2 was claimed to be legal.

[4]. On 16.10.2010, following issues were framed by the trial Court:-

- “1. Whether plaintiff is owner in possession of land measuring 8K-0M being 160/2111 share of land measuring 105-11 M situated in village Kavi, Sub Tehsil Madalanda District Panipat? OPP*
- 2. Whether relinquishment deed bearing vasika No.1450 dated 12.11.2002 is illegal, null and void and not binding upon the rights of the plaintiff? OPP*
- 3. Whether the suit is not maintainable in the present form? OPD*
- 4. Whether the suit is time barred? OPD*
- 5. Whether the suit is bad for non-joinder of necessary parties?*

6. *Whether the plaintiff has no cause of action to file the present suit? OPD*
7. *Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction? OPD*
8. *Relief.”*

[5]. Thereafter both the parties led their respective evidence on the aforesaid issues to prove their case.

[6]. It was noticed by the trial Court that the main thrust of the argument on behalf of learned counsel for the plaintiff/appellant was that the relinquishment deed Ex.P-2 was carrying a specific recital that the suit land was ancestral property. Plaintiff was the only son of defendant No.3 and defendant No.3 was the Karta of the family. The property was devolved upon defendant No.3 after demise of his father. Defendant No.1 while appearing as DW-1 categorically admitted in his cross-examination that originally his father was owner of the land measuring 100 *Kanals* 18 *Marlas* and he died in the year 2002. During his lifetime, he allotted the land amongst the defendants in equal shares. He also admitted that with the execution of relinquishment deed, there was increase of 8 *Kanals* of land in their shares. He also admitted that the plaintiff was living with his parents. The plaintiff was minor at the time of institution of the suit and was in care and custody of his mother. Plaintiff executed a special power of attorney in favour of his

mother, who appeared as PW-1 and reiterated the stand taken in the plaint. Defendant Nos.1 and 2 took up the stand that the parents of the minor plaintiff were having adverse interest against the plaintiff and the relinquishment deed was executed by defendant No.3 with his full consciousness and he received a sum of Rs.3,33,000/- from defendant Nos.1 and 2. They claimed that the relinquishment deed had taken the character of a sale deed. There was a legal necessity felt by defendant No.3 and for the benefit of the estate i.e. to pay off debt, he executed the said relinquishment deed in order to pay off the debt of the Bank and the said payment was made by defendant Nos.1 and 2.

[7]. It was further noticed that in the relinquishment deed Ex.P-2, no such reference as regards the payment of Rs.3,30,000/- was made by defendant Nos.1 and 2 to defendant No.3. Even, learned counsel for defendant Nos.1 and 2 gave a suggestion to PW-1 in her cross-examination in respect of the fact which was not even pleaded by them in the written statement. Defendants were living separately after inheriting the land from their father during his lifetime. They were in separate cultivating possession of their shares. They were not putting up together as a unit in the form of joint Hindu family.

[8]. The trial Court on the basis of material on record, recorded the finding that the defendants were separate in their

living, cultivation, in mess, therefore, there was no occasion for defendant No.3 to relinquish the suit land in favour of defendant Nos.1 and 2. The execution of relinquishment deed by defendant No.3 in favour of his brothers i.e. defendant Nos.1 and 2 in the presence of his son i.e. the plaintiff was held to be without any right and was detrimental to the rights of the plaintiff. The plaintiff being son of defendant No.3 had the right in the suit property since his birth in the joint Hindu family. There is unity of ownership and community of interest in the joint Hindu family property. No coparcener has any right to predicate a particular share in the coparcenary property as it decreases the undetermined share of a coparcener in the coparcenary property upon the induction of new coparcener by way of birth and the undetermined share get increased upon the death of some coparcener. In view of settled position of law that at the time of partition of coparcenary property, the stand of defendant No.3 was justified that at the time of disruption of the joint Hindu family, wife of the Karta, Karta and all sons being coparceners took equal shares in the coparcenary as per notional partition. However, with the amendment in the Hindu Succession Act in the year 2005, the daughters are also considered to be coparceners.

[9]. It was further recorded by the trial Court that the

admission of the defendants in the context of paying a sum of Rs.3,30,000/- also demolished the case of defendant Nos.1 and 2 as in that eventuality, it would be a case of transfer. As per admission of DW-1 Bhoop Singh, all the brothers separated in the year 1982 and they were having separate agricultural land and separate mess. It was also held that defendant Nos.1 and 2 could not justify as to how much money was given to defendant No.3 for paying off the alleged loan of the Central Bank of India and they could not justify the relinquishment deed by converting the same into a sale deed. Once defendant Nos.1 and 2 themselves came forward with a stand of relinquishment deed was in fact a sale deed, then a heavy onus was upon them being transferee to inquire into the factum of legal necessity on the part of defendant No.3 to alienate the suit land. No evidence was led by defendant Nos.1 and 2 to show any financial crisis with defendant No.3. No such inquiries were made by defendant Nos.1 and 2. Consequently, the issue Nos.1 and 2 were decided in favour of the plaintiff and as a result of that suit of the plaintiff was decreed by the trial Court vide judgment and decree dated 05.01.2011.

[10]. Feeling aggrieved against the aforesaid judgment and decree dated 05.01.2011 defendant Nos.1 and 2 filed an appeal before the lower Appellate Court. In the said appeal, an

application under Order 6 Rule 17 CPC was filed for amendment in the written statement. The admission *qua* nature of the property being ancestral was sought to be withdrawn by way of amendment in question.

[11]. Defendant Nos.1 and 2 projected a case in the appeal that the recital of the relinquishment deed Ex.P-2 in respect of land being ancestral was against the revenue record, therefore, the factum of land being ancestral was sought to be denied by making amendment in the written statement. Defendant Nos.1 and 2 further claim that the land standing in the name of defendant No.3 Nafe Singh was self-acquired property and was not ancestral or coparcenary property.

[12]. An another application was filed under Order 41 Rule 27 CPC by defendant Nos.1 and 2 in the appeal before the lower Appellate Court for leading additional evidence. Defendant Nos.1 and 2/appellants before the lower Appellate Court sought to lead evidence in the form of mutation and *jamabandi* to prove that the land in the hands of defendant No.3 was not ancestral, rather the same was his separate property. They claimed that there was no material available before the trial Court to form an opinion with regard to the land in question being ancestral in nature.

[13]. Both the applications were contested by the plaintiff on the ground that the ancestral nature of the land was admitted by defendant Nos.1 and 2 and the fact once admitted was not required to be proved by way of any evidence as a consequence of land being ancestral in nature, there was no necessity of allowing the application for leading additional evidence.

[14]. The lower Appellate Court accepted the application vide the impugned order dated 30.11.2012 for amendment of the written statement and remanded the case to the trial Court with a direction to provide one opportunity to the defendants to amend the written statement and then frame an issue regarding nature of property and proceed in accordance with law. That is how the present appeal came to be filed before this Court.

[15]. Learned counsel for the appellant submitted that in the written statement filed by defendant Nos.1 and 2 in para No.5 of the preliminary objection and para No.2 on merits are to the following effect:-

“5. That the plaintiff has no cause of action against the answering defendants, as the defendant No.3, who is the father of the plaintiff has relinquished/released his all rights, title and interest in favour of the answering defendants after obtaining the consent of his successors and

the right of the plaintiff over the said land would have to arise only after the demise of his father and his father has every right to deal with the said land in any manner whatsoever he likes during his life time. Beside, this the father of the plaintiff has every right to relinquish his proportionate share in the land in question in favour of the answering defendants, therefore, the suit of the plaintiff is liable to be dismissed/rejected outrightly under Order VII Rule 11 CPC.”

2. *That the contents of para No.2 of the plaint as stated is wrong, incorrect, false, vague, frivolous and hence specifically and vehemently denied line by line. It is denied that the plaintiff along with his father defendant No.3 formed joint Hindu family of which the defendant No.3 is Karta and the above said land 8K 0M was ancestral joint Hindu family property in the hands of the defendant No.3 qua the plaintiff.”*

[16]. Learned counsel further submitted that in view of para No.2 of the written statement on merits and as per the statement of DW-1 the property in question was proved to be ancestral joint Hindu family property and the remand by the lower Appellate Court was not justified in law.

[17]. I have heard learned counsel for the parties.

[18]. Evidently, two prayers were made before the lower Appellate Court. One was in the form of Order 6 Rule 17 CPC

i.e. for amendment of the written statement and the second was in respect of additional evidence in terms of Order 41 Rule 27 CPC. Perusal of impugned order passed by the Addl. District Judge, Panipat does not show any decision on the application under Order 41 Rule 27 CPC. The Order 41 Rule 28 CPC would be attracted only in case the prayer for additional evidence was allowed by the lower Appellate court without settling the mode of taking additional evidence by the lower Appellate Court. The provision is applicable only where additional evidence is allowed by the lower Appellate Court, then the lower Appellate Court would be obligated either to take evidence of its own or direct the Court from whose decree the appeal is preferred to take such evidence and sent the same to the lower Appellate Court. The lower Appellate Court has only accepted the application under Order 6 Rule 17 CPC and thereafter remanded the case to the trial Court for fresh decision.

[19]. It is a settled position of law that the defendants can take inconsistent pleas in the written statement. All amendments which are necessary for just decision of the case should be allowed. The ratio of judgment passed in **Abdul Rehman and Anr. vs. Mohd. Ruldu and Ors., 2012(4) R.C.R. (Civil) (SC)** can be relied. Much emphasis was made by learned counsel for the appellant on the plea that admission of fact was made by

the defendants in the pleadings i.e. the written statement. Perusal of para no.2 of the written statement on merits would give explanatory understanding of reading. Defendant Nos.1 and 2 have denied the contents of para No.2 of the plaint. It was also denied that the plaintiff along with his father i.e. defendant No.3 formed joint Hindu family of which defendant No.3 was the Karta. Further readings of the words “and the above said land 8 K 0M was ancestral joint Hindu family property in the hands of the defendant no.3 qua the plaintiff” would give distinct meaning than the one as claimed by the plaintiff/appellant.

[20]. The admission in pleadings though cannot be allowed to be withdrawn in ordinary circumstances, however admission in the oral testimony can be explained away. Whether the pleadings made in para No.2 of the written statement would amount to an admission of fact or not would be on questionable note. This fact further can be seen from the replication filed by the plaintiff in respect of para N.2 on merits wherein it was recorded to the following effect:-

“2. That para No.2 of the plaint is correct and that of W.S. is wrong. It is correct that plaintiff along with his father formed joint Hindu family of which his father i.e. defendant No.3 is 'Karta'.”

[21]. Evidently, para no.2 of the written statement was

denied in *toto by the plaintiff*, however, para no.2 of the plaint was reiterated. No explanation with regard to the alleged admission in para No.2 of the written statement was given. Amendment can be allowed at any stage of the litigation, if the same is felt necessary by the Court to advance cause of justice. The nature of property whether ancestral or otherwise ought to have been proved by way of revenue record. Character of the suit land whether ancestral, coparcenary property or otherwise cannot be decided on mere alleged admissions or in the recital of relinquishment deed. In view of **Usha Balashaheb Swami and Ors. vs. Kiran Appaso Swami and Ors., 2007(2) R.C.R. (Civil) 830**, the amendment in the written statement is to be liberally construed and the same stands on different footing. The defendant can take new and inconsistent defence in the written statement and even can explain the admissions made in the pleadings. Inconsistent pleas can be taken by the defendant in the written statement.

[22]. In the instant case, the alleged admission made in para No.2 of the written statement on merits is not conclusive as reading of the same would give questionable interpretation. The replication filed by the plaintiff is not specific in respect of alleged admission in para No.2 of the written statement. Therefore, I am of the view that issues Nos.1 and 2 which were

jointly decided by the trial Court and in view of findings recorded by the lower Appellate Court were required to be revisited by the trial Court and the amendment in the written statement would be necessary to explain and prove nature of the land being ancestral would be strictly confined to the existence of revenue record which would be decided by the trial Court on framing of issue regarding nature of the property and allowing the parties to lead material evidence to prove the same.

[23]. In view of material on record, I do not see any error of jurisdiction in the impugned order passed by the lower Appellate Court as the remand on acceptance of the application under Order 6 Rule 17 CPC would be inevitable to answer the *lis* in respect of the property being ancestral after framing necessary issue by the trial Court and allowing the parties to lead evidence in respect thereof.

[24]. In view of above, no interference is called for in the impugned order. This appeal is accordingly dismissed.

September 19, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No