

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

RSA No.2141 of 2015 (O&M)
Date of decision: 23.03.2017

Hardev Singh (now deceased) through L.Rs. ..Appellants

Versus

Bhan Singh (now deceased) through L.Rs. ..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Amjad Khan, Advocate and
Mr. Anureet S. Sidhu, Advocate
for the appellants.

Daya Chaudhary, J.

CM No.5581-C of 2015

There is delay of 46 days in filing the present appeal.

Application is allowed as per the grounds mentioned therein and delay of 46 days in filing this appeal is condoned.

RSA No.2141 of 2015

The present appeal has been filed by L.Rs. of deceased-Hardev Singh to challenge impugned judgment and decree dated 11.12.2014 passed by the Additional District Judge, Sangrur as well as judgment and decree dated 23.08.2012 passed by the Civil Judge (Junior Division), Malerkotla.

Briefly, the facts of the case are that the appellants-plaintiffs filed a suit for possession to the extent of 1/6th share of land and also for declaration that the land in dispute is Hindu joint family, coparcenary and ancestral property. The sale deeds dated 03.05.2001, 07.05.2001, 09.05.2001, 10.05.2001 and 14.05.2001 were executed by defendant No.1 in favour of defendant No.2 without legal necessity and not for benefit of estate. It was done without consent of coparceners and same are stated to be

illegal, null and void and were liable to be set-aside. It was also prayed in the suit that the mutation numbers of said sale deeds were also liable to be struck down. A further prayer was also made for restraining defendant No.2 from further alienating the suit property by way of sale, mortgage or lease etc. The suit was contested by the respondents-defendants by filing written statement stating therein that it was neither ancestral nor coparcenary property and the plaintiffs were not having any right over the property. Defendant-Bhan Singh performed marriage of his daughter and the amount spent on marriage was borrowed. It was to be returned by way of sale consideration. The said suit filed by the plaintiffs-appellants was dismissed vide judgment and decree dated 23.08.2012.

Aggrieved by the said judgment and decree passed by the trial Court, an appeal was filed before the Additional District Judge, Sangrur, which was also dismissed vide judgment dated 11.12.2014.

After losing the battle before the two Courts below, the present appeal has been filed by raising various grounds.

Learned counsel for the appellants submits that the judgments and decrees passed by both the Courts below are not based on proper appreciation of evidence as the appellants-plaintiffs placed number of documents in evidence but all those documents were not taken into consideration. It was in the form of certified copies of mutation of sale of the suit land. The appellants-plaintiffs also produced certified copies of the *jamabandi* for the year 1911-12 wherein Nawab Sahib Malerkotla was recorded as owner of the suit land but in the column of Dakhilkar the name of Nariana son of Nand Singh was recorded showing 'self cultivation'.

Learned counsel further submits that the said *jamabandi* has not been

referred to by the Courts below. Father of Bhan Singh-defendant was recorded as Dakhilkar and he subsequently, became owner of this land by virtue of law. Ex.P-7 is the copy of *jamabandi* for the year 1955-56 wherein Amar Singh, Bhagat Singh and Bhan Singh sons of Narayan Singh were recorded as owner in equal shares. It clearly shows and proves that property in dispute was developed upon Bhan Singh and his brothers in succession from his father Narayana. Both the Courts below have given finding that no evidence was produced by the plaintiffs to show that they were having 1/6th share by birth. A wrong finding has been recorded by both the Courts below that the property in dispute was self acquired by deceased-Bhan Singh whereas there was no documentary evidence to show that Bhan Singh acquired the property by any other means except through inheritance from his father Narayan Singh. Other documents were also on record to show that the property in dispute was joint Khewat and was duly partitioned between three brothers. At the end, learned counsel for the appellants submits that the plaintiff-Hardev Singh (now deceased) was son of deceased-Bhan Singh and was member of the coparcenary property and was having right to challenge the alienation of his father-Bhan Singh. It was never proved on record that the alienation was for consideration or legal necessity. Even it was not proved that any loan was obtained and it was to be repaid.

Heard arguments of learned counsel for the appellants and have also perused the judgment and decree passed by the trial Court as well as the Lower Appellate Court.

The following issues were framed by the trial Court: -

1. Whether the property in dispute was ancestral and coparcenary property in the hands of defendant No.1?OPP

2. Whether plaintiff has right by birth in the disputed property being one of the coparcener?OPP
3. Whether defendant No.1 has alienated the disputed property to defendant No.2 without any legal necessity, if so its effect?OPP
4. Whether the defendant No.2 is threatening to further alienate the suit land illegally and forcibly?OPP
5. Whether the suit is maintainable in the present form?OPP
6. Whether the disputed property is self acquired property of defendant No.1?OPD
7. Whether the property was sold by the defendant No.1 to repay the loan amount which was borrowed by him for marriages of his daughter and for treatment of his wife?OPD
8. Whether plaintiff is estopped from filing the present suit by his own act and conduct?OPD
9. Whether defendant No.2 has purchased the disputed property for valuable consideration?OPD
10. Whether the suit is within limitation?OPD
11. Relief.

On the basis of evidence produced by both the parties, following findings were recorded by the trial Court: -

“After hearing ld. Counsel for parties and going through the case file, I am of the considered view that plaintiff is claiming that the suit land in the hands of defendant No.1 Bhan Singh is an ancestral and coparcenary property, so he has his birth right

in the suit property. PW-1 Bagga Singh Panch is admitting in his cross-examination that he has seen only Bhan Singh and he has not seen his forefathers, PW-2 Abdul Hamid who has translated the Jamabandi for the year 2011-12 which is Mark-F, Mark-G, Mark-H, on the basis of these documents plaintiff is claiming that the suit property in the hands of defendant No.1 is ancestral and coparcenary property but from these documents, it is not proved that it is ancestral property, a Hindu must inherit the property from his forefather's forefather's father but from these documents Mark-G, G, H, in the column of ownership name his highness Nawab Sahib Mamduh is written and in the column of cultivation name Narian is written. So from these documents, it is not proved that defendant No.1 inherited the property from his forefathers as per pedigree table mentioned in Para No.2. Moreover, this witness has admitted that he has not translated the Jamabandi word by word. From these documents, it is not proved that Bhan Singh inherited the property from his forefathers and as held in 2010(2) CCC 720 (P&M) that Hindu Law-ancestral property-presumption is in favour of the land non ancestral unless and until it is proved to the contrary that it is ancestral. From the above discussion, plaintiff has failed to prove that the suit property is ancestral property in the hands of Bhan Singh and the case law 2009(2) RCR(C) 428 (P&M), 2005(4) RCR(C)780 (P&H), 2004(2) Civil Court Cases 649 (P&H), 2010 (3) CCC 072 (P&H) (supra) relied upon by the Id. Counsel for defendant No.1 are duly applicable are decided against the plaintiff and in favour of defendants.”

The finding recorded by the Lower Appellate Court is as under:-

“Heard. File perused. The plaintiff/appellant filed suit for joint possession on the ground that suit property in the hands of defendant No.1 Bhan Singh is ancestral and coparcenary property and sale deeds executed by him in favour of Kuldeep Kaur defendant No.2 are without legal necessity and without consideration. Plaintiff had examined Abdul Hamid PW2 to prove translation of jamabandi, mutation and other documents but during cross-examination he admitted that he had not done translation word to word and he could not read some portions of the documents. On this ground his evidence was discarded. Now plaintiff wants to examine Lachhman Dass Patwari to prove fresh translation of those documents. First of all, all these facts were within the knowledge of the plaintiff and he could have examined proper person who knew both Urdu and Punjabi, to prove the translation. It was for the plaintiff to prove his case and to stand on his own legs. He has not prepared any except to prove nature of property and even from the documents on the file, it comes out that suit property was not ancestral and coparcenary property in the hands of Bhan Singh. Thus no purpose would be served by examining Lachhman Dass Patwari at this stage nor his examination is necessary for proper and just adjudication of the controversy. In view of these facts, application filed by appellant/plaintiff for additional evidence is without merits and is hereby dismissed.”

On perusal of finding recorded by both the Courts below, it is apparent that the plaintiff has failed to prove his claim that the suit land in the hands of defendant-Bhan Singh is an ancestral and coparcenary property and the appellants have no birth right over the suit property. PW-1 Bagga Singh Panch has admitted in his cross-examination that he has only seen Bhan Singh but he has not seen his forefathers. It has been mentioned in the finding recorded by the trial Court that in the column of ownership, name of Highness Nawab Sahib Mamduh is written and in the column of cultivation, name of Narain is written. It shows that defendant No.1 has inherited the property from his forefathers as per pedigree table. The plaintiff failed to prove that the suit property was ancestral in the hands of Bhan Singh. The plaintiff has also failed to prove that it was ancestral and coparcenary property. Plaintiff himself has admitted that at the time of registration of sale deed, the amount was received by Bhan Singh, which proves that Bhan Singh took amount and sold land for consideration. In the registered sale deed, the consideration and mode of payment was also mentioned.

PW-1 Bagga Singh has also admitted that earlier there was dispute between Hardev Singh and Bhan Singh. Similarly, PW-4 Sharanjit Kaur has also admitted that Bhan Singh was patient of diabetes and plaintiff was residing separately from him. It has been proved on record that Bhan Singh sold the land for legal necessity and could alienate the same for legal necessity.

On perusal of findings recorded by both the Courts below, the plaintiff has failed to prove that the property in dispute was ancestral and coparcenary. It was self acquired property of Bhan Singh, defendant No.1.

The plaintiff could not prove from any document/evidence that the

defendant No.1 inherited the property from his forefathers.

Even the suit was filed after the death of his father and it was not maintainable. It was proved on record that the property in dispute was purchased by defendant No.1 from defendant No.2. Onus was on plaintiff to prove that the property in dispute was ancestral and coparcenary. Defendant No.1 has every right to alienate the suit land without showing any legal necessity. Sale deeds were executed in the month of May 2006 and period of challenging sale deed was three years from the date of knowledge at the most whereas the suit was filed after expiry of three years.

In the present case, the appellants were having knowledge about the sale deed and period of limitation was to start from the date of registration and as such, the appellants challenged the sale deed after expiry of period of limitation.

In view of the facts and the finding recorded as above, there is no merit in the contentions raised by learned counsel for the appellants and the present appeal being devoid of any merit is, hereby, dismissed.

23.03.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No