

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

**RSA 372/2015(O&M)
Date of decision:22.11.2017**

Amarjit Kaur

.....Appellant

v.

Mohinder Singh and others

.....Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.Vishal Munjal,Advocate for the planitiff/appellant.

Jaswant Singh,J,(Oral).

Plaintiff/appellant is in second appeal against concurrent findings recorded by both the Courts below whereby her suit for declaration and permanent injunction was dismissed by Additional Civil Judge(Sr.Div.) Balachaur vide judgment and decree dated 19.2.2013 and findings thereof affirmed in appeal by learned District Judge, S.B.S.Nagar vide judgment and decree dated 30.7.2014.

Briefly noticed, plaintiff filed the suit for declaration to the effect that she alongwith defendant no.1 were owners in joint possession of the suit property,fully detailed in the head note of the plaint. Consequential relief of permanent injunction was sought restraining defendants from dispossessing the plaintiffs from the suit land. It was averred that they have become owners in possession of land measuring 13 kanals 15 marlas out of total suit land measuring 81 kanals 15 marlas on the basis of Joint Hindu Family coparcenary properties of the parties. They claimed that originally

their great grandfather Punjab Singh was owner in possession of the land in Village Tandoh and after his death, his estate devolved upon their grand father Puran Singh, who remained Karta of the Joint Hindu Family of the parties to the suit. After consolidation, 13 kanals 15 marlas of land out of total land of 81 kanals 15 marlas became the ownership of plaintiffs and their father Mohinder Singh, defendant no.1, the above said land being Joint Hindu Family coparcenary property. Plaintiffs claimed that entries in the revenue record depicting 13 kanals 15 marlas in the name of their father defendant no.1 was wrong, incorrect, illegal and ineffective.

Upon notice, defendant no.1 contested suit by filing written statement, whereas defendants 2 to 8 were proceeded against ex parte.

In his written statement defendant no.1 denied that his grandfather Punjab Singh was in possession of the land in Village Tandoh. It was also denied that estate of Punjab Singh devolved upon Puran Singh and that his father was not karta of the alleged Joint Hindu Family. He claimed that estate of Puran Singh devolved upon the defendants i.e. five brothers and their mother on the basis of registered Will dated 7.8.1987 executed by their father Puran Singh in their favour. It was denied that the suit property was coparcenary property of the parties being Joint Hindu Family as mentioned under Mitakshara Hindu Family.

On the pleadings of the parties, issues were framed. Both sides led evidence. The Courts below on the basis of evidence led by the parties dismissed the suit of the plaintiff. Hence the present appeal.

Heard learned counsel for the appellant and perused the paper book carefully.

As per case of the plaintiffs the suit property was Joint Hindu

Family coparcenary property whereas defendant no.1 denied that suit property was coparcenary property of the parties being Joint Hindu Family as mentioned under Mitakshara Hindu Family. The Courts below on the basis of evidence led by the parties has found that plaintiffs to prove their case have examined Amarjit Kaur, one of the plaintiffs (PW-1). In her cross examination she admitted that Mohinder Singh-defendant no.1 was cultivating the suit land and plaintiffs never cultivated the suit land. Further, plaintiffs filed jamabandi for the year 2005-06 Ex.P1 and jamabandi for the year 1990-91 Ex.P2. As per jamabandi for the year 2005-06 (Ex.P1) Mohinder Singh-defendant no.1 alongwith his co-sharers was shown in possession of the suit land. In the jamabandi for the year 1990-91 (Ex.P2) Puran Singh was shown in possession of the suit land. The case of the plaintiffs was that suit land was owned by Punjab Singh and Puran Singh inherited the suit property from his father Punjab Singh, however, plaintiffs failed to produce any document on record to show that suit property was originally owned by Punjab Singh and his estate was inherited by Puran Singh. No death entry of Punjab Singh was produced on the file. On the basis of the same both Courts rightly held that mere oral statement of Amarjit Kaur PW1 was not suffice to prove the fact that the suit property was coparcenary property. The admission of plaintiff Amarjit Kaur PW-1 that Mohinder Singh was in possession of the suit property and he was cultivating the same goes to show that plaintiffs never came in possession of the suit property. Though the plaintiffs challenge mutation no.1937 regarding the estate of Puran Singh, but said mutation had not been produced on the file by the plaintiffs. On the other hand contesting defendant Mohinder Singh produced the mutation regarding inheritance of

Puran Singh Ex.D1 according to which Mohinder Singh alongwith his brothers and mother became owner of the suit property on the basis of registered Will dated 7.8.1987. Execution of this registered Will dated 7.8.1987 was not challenged by the plaintiffs but only challenged mutation. The mutation was sanctioned on the basis of registered Will dated 7.8.1987. Keeping in view the aforesaid evidence on record, the courts below have rightly held that property in the hands of Mohinder Singh and his brothers could not be termed as coparcenary property as the same was inherited on the basis of registered Will and ancestral nature of the suit property was not proved on the file as claimed by the plaintiffs.

In view of the above, no question of law much less substantial question of law arises for consideration in this appeal.

Dismissed.

22.11.2017
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No