

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.1489 of 2017 (O&M)
Date of Decision: 12.07.2017**

Mela Singh and others

... Appellants

Versus

Jaswinder Kaur and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. S.C. Chhabra, Advocate,
for the appellants.

RAJIV NARAIN RAINA, J.

1. I must at the outset compliment and record my appreciation for the meticulous manner in which the facts have been marshalled thread bare, digested and explained in chapter and verse on all the original eight issues [suitably reframed to 6 for answers] by the learned Additional District Judge, Mansa allowing partly the suit of the plaintiffs by partially overruling the judgment and decree dated March 17, 2016 of the learned Additional Civil Judge (Sr. Division), Sardulgarh in a suit for possession of suit land etc. The trial Judge had dismissed the suit in toto.

2. The learned Additional District Judge, Mansa had decided the appeal very appreciably within 9 months of the judgment and decree in suit concluding in para.46 as follows:-

“(i) Plaintiffs are not entitled to any share in the property situated at village Bhunder and thus the gift deed No.561 dated 01.06.2010 executed by Muni Ram @ Santa Singh in favour of respondent No.5 as well as mutation

No.2284 sanctioned on the basis of aforesaid gift deed is perfectly valid;

(ii) Plaintiffs are entitled to 1/6 share each in the property situated at village Sardulgarh out of the ½ share of Muni Ram @ Santa Singh son of Jeona Singh in the suit property situated at village Sardulgarh as detailed in the plaint and, thus, the transfer deed No.10 dated 03.04.2013 is void to the extent of the share of the plaintiffs and shall operate only with respect to the share of Muni Ram @ Santa Singh and the mutation sanctioned No.26840 dated 15.04.2013 on the basis of aforesaid transfer deed shall be liable to be modified to the extent indicating in the decree.”

3. I would have like to place beneath the above conclusions recorded by the Judge in inverted commas since the judgment speaks for itself and one reading would leave no doubt that nothing in it can be altered and any further reasoning by the Court in second appeal would only be redundant. As a matter of fact, the judgment in appeal is such that any extra word would only amount to unnecessarily re-writing it. It will serve no useful purpose to analyze what has been analyzed so articulately with the Judge quoting from the Principles of Hindu Law by Mulla; Vol.1 (17th Edition) Mayne's Hindu Law & Usage, 14th Edition at pages 627-628 and 641 and many provisions of law on each and every aspect of a rather complex case involving gift, adoption, succession and inheritance.

4. The principles of Hindu Succession (Amendment) Act, 2005 Section 6 of the Hindu Succession Act, 1956 providing for devolution of interest in coparcenary property have been discussed in graphic detail supported by many judicial precedents pre and post independence. Several provisions of the Code of Civil Procedure; innumerable decisions well researched of each point on all the nine issues had been elucidated in the

judgment in appeal; Section 111 of Indian Evidence Act; paras.268 and 278 of the Hindu Code by Sir Hari Singh Gaur and the question of how issues are to be framed under Order 14 Rule 1 CPC; Section 6 and 8 (1) of the Hindu Minority & Guardianship Act; Section 11 (vi) of the Hindu Adoption & Maintenance Act, 1956 have all found mention in the context of the facts of the case. Dealing with each of the 34 exhibits and the evidentiary weight to be attached to them and the plea why the case should not be remanded as asserted by the appellants for non-framing of material issues. The Judge even re-framed the real issues for determination in Para.16 by fusing the issues struck with the real issues actually arising out of the entire complexity of the case into six issues with the same evidence produced by the parties and then deciding each one of them separately is wholesome exposition of the law which I can hardly be in disagreement. The Judge has discussed the true value of documents marked but not exhibited and the principles of adoption on which the case largely rested and whether appellant/plaintiff 1 Jaswinder Kaur was disqualified under Section 25 of the Hindu Succession Act, 1956 to inherit the estate of Sukhwinder Dass holding that she was not qualified in law to the entire suit property. The exact place of transfer deed No.10 dated April 03, 2013 allegedly executed by Muni Ram @ Santa Singh in favour of defendant 1 to 4 in respect of the suit property and whether this is valid or not has not been left untouched in the analysis of the subject matter, separately discussing evidences Exs.P-22 to P-56 under newly framed point (v) relating to transfer deed and holding that Muni Ram @ Santa Singh was not competent to transfer the whole of the aforesaid property vide transfer deed No.10 dated April 03, 2013 in favour of

defendants 1 to 4 as null and void holding that appellants/plaintiffs 1 to 3 each are entitled only to $1/8 + 1/24$ share = $1/6^{\text{th}}$ share each of the aforesaid property. But at the same time holding it valid to the extent of share of Muni Ram @ Santa Singh the Guru of the Dera under point No.(vi) Exs.P-1 to P-21 have been dealt with in detail regarding property being coparcenary so as to entitle the plaintiffs-appellants of any right, title or interest in the same and whether gift deed No.561 dated June 01, 2010 allegedly effected by Muni Ram @ Santa Singh in favour of defendant is valid by concluding that plaintiffs could not lead any evidence to prove the nature of the property being coparcenary in nature.

5. So far as land situated in Village Bhunder is concerned it is held by the court next below that it was not a co-parcenary property of Muni Ram @ Santa Singh and accordingly, the plaintiffs lose all rights to challenge gift deed dated June 01, 2010 executed by Muni Ram @ Santa Singh in favour of the Dera.

6. Factum of fraud imputed by the plaintiffs was not established by evidence being played upon Muni Ram @ Santa Singh in effecting the transaction as rightly held by the court a quo.

7. To put the facts again, but in a nutshell which need not be traversed in entirety, the case of the plaintiffs was for possession of land measuring 222 Kanal 10 Marlas situated in the area of Village Bhunder and in land admeasuring 92 Kanal 4 Marla situated in the area of Village Sardulgarh as detailed in the plaint. The plaintiffs alleged that plaintiff 1 namely, Jaswinder Kaur is daughter-in-law and plaintiffs 2 and 3 are the grandsons of Muni Ram @ Santa Singh. Plaintiff 1 was the mother of

plaintiffs 2 and 3 who were her minor sons at the time of filing suit. She challenged the gift deed No.561 dated June 01, 2010 executed by Muni Ram @ Santa Singh in favour of entity defendant 5, namely, Dera Baba Amar Dass Charandasia and transfer deed No.10 dated April 03, 2013 executed by Muni Ram @ Santa Singh in favour of defendants 1 to 4 and the mutations sanctioned on the basis of these transactions alleging that they were null and void.

8. Muni Ram @ Santa Singh son of Jeona Singh was unmarried and had adopted his nephew's son, namely, Sukhwinder Dass s/o Bogha Singh who was the husband of plaintiff 1 and father of plaintiffs 2 & 3. To complicate matters Sukhwinder Dass husband of plaintiff 1 was adopted when he was two years old and had thereafter started residing in the Dera at Bhunder with Muni Ram @ Santa Singh. Muni Ram @ Santa Singh was the Mahant. He appointed Sukhwinder Dass as a chela.

9. After her marriage, plaintiff 1 resided with her husband Sukhwinder Dass at the Dera and two sons were born to them, namely, plaintiffs 2 and 3. She claimed suit property as coparcenary in nature as the same was received by Muni Ram @ Santa Singh from his forefathers through inheritance and Muni Ram @ Santa Singh only acted as Karta of Joint Hindu Family. Sukhwinder Dass died on June 27, 2006 and thereafter plaintiffs entered into possession of the suit land.

10. In these strange circumstances, Plaintiff 1 pleaded that she was dispossessed and thrown out of the matrimonial home by Bogha Singh and others and her sons plaintiffs 2 & 3 were forcibly retained by Bogha Singh.

Muni Ram @ Santa Singh died on June 16, 2013 and that is when the suit

was brought.

11. This Court has nothing more to say except that substantial questions of law arose before the First Appellate Court and all have been answered analytically and wholesomely with supporting reasons as case law and I find myself in complete agreement with the exhaustive judgment in appeal.

12. Before leaving I would only notice the Division Bench judgment relied upon by the learned counsel for the appellants in Smt. Asha Rani v. Controller of Estate Duty, 1997 (4) RCR (Civil) 210, on the question of coparcenary and Hindu Undivided Family Property and the rights of female member of HUF to claim partition. A female can be a member of HUF but not of a coparcenary is what the law ordains. She has no interest in HUF property by birth and has no right to claim partition. She has only a right of maintenance. The last male-holder enjoys the same power over the property as if the same was his personal or self-acquired property and possesses right of disposal of the same. The judgment is on the subject matter of Estate Duty and Income Tax arising out of a reference made by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar under Section 64 (1) of the Estate Duty Act, 1953. The question was whether the Tribunal was legal justified in holding that the entire value of the properties belonging to HUF was exigible to Estate Duty on the death of the sole surviving coparcener who constituted HUF when assessee's wife died has been answered by the Bench. I fail to see how this case helps the appellants in any manner. The case is distinguishable on facts without even a remote connection to the present case. The lower appellate court has discussed the issue of

coparcenary and HUF property in detail in the judgment and I have nothing to add. Identification of shares is based on correct statements of law noticed and dealt with elaborately in a highly satisfactory and commendable manner.

13. For the reasons assigned in the judgment in appeal as briefly discussed above, the appeal is without any merit and is dismissed.

14. The Lower Court records be sent back after following the procedure.

(RAJIV NARAIN RAINA)
JUDGE

12.07.2017
manju

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>