

**RSA No.1384 of 2002 (O&M) AND
XOBJC No.20-C of 2002**

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

**RSA No.1384 of 2002 (O&M) AND
XOBJC No.20-C of 2002
Date of decision : 21.09.2018**

Malkiat Singh and others

... Appellants

Versus

Baldev Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jai Bhagwan, Advocate
for the appellants.

Mr. A.P. Kaushal, Advocate
for the respondents.

AMIT RAWAL, J.

This order of mine shall dispose of the appeal bearing RSA No.1384 of 2002, preferred by the plaintiffs, who had been successful before the trial Court, but partly before the lower Appellate Court viz-a-viz land in respect of estate of Amar Singh with regard to the Village Jalbera, Tehsil Sirhind, District Patiala, held to be ancestral and cross objections bearing XOBJC No.20-C of 2002 preferred on behalf of the defendants viz-a-viz decretal of the suit qua property in Village Rajindergarh, Tehsil Sirhind, District Patiala.

The plaintiffs instituted the civil suit bearing No.344 of 1985 against the defendants claiming declaration by challenging the judgment and decree dated 17.12.1984 in a civil suit No.464 of 1984 to be null, void

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and inoperative against their rights and claimed joint possession on the following properties mentioned at letters A, B, C & D:-

"(A) 6/25 share of agricultural measuring Khewat No.222 Khatoni No.316, Rect. No.9, Khasra Nos.1(8-0), 2/1(3-12), 9(6-10), 10(8-0), 19 min (5-0), 20 (8-0), 26(1-0), 6//11/1/2 (1-6), 20 (51-6), 21 (8-4), 7//15/2 (4-0), 16 (8-0), 25 (8-0), 8//5/1 (7-7), 60//6/1 (2-8), 7 (7-19), 14 (4-12), 39//26/9 (0-10), 133//4 (3-0), khatoni No.317 khasra Nos.9//18/2 (4-6), 19 min (3-0), 21 (8-0), 20 (8-0), 23 (7-6), khatoni No.318, Rect. No.60 Khasra Nos.6/2 (5-0), situated in Village Rajindergarh Tehsil Sirhind District Patiala, according to the jamabandi for the year 1981-82.

(B) 1/5 share of agricultural land measuring khewat No.82 khatoni No.121, Rect. Nos.15 Khasra Nos.5 (7-19), 6 (8-0), 15/1 (2-18), 16//1/1 (5-12), 10/2 (6-8), 11 (8-2), according to the jamabandi for the year 1979-80 situated in Village Jalbera Tehsil Sirhind District Patiala.

(C) Agricultural land measuring 15 kanals 2 marlas comprising khewat Khatoni No.222/316 Khasra Nos.6//11/1/2 (1-6), 20 (5-16). 7//16 (8-0), situated in village Rajindergarh Tehsil Sirhind District Patiala.

(D) Agricultural land measuring 7 kanals 19 marlas comprising khewat/khatoni No.82/121 Khasra No.15//5 (7-19) situated in Village Jalbera, Tehsil Sirhind District Patiala."

It was averred that the land mentioned at letters C & D in heading of the plaint were out of the land mentioned at letters A & B and land mentioned A & B was joint family coparcenary/ancestral property of the plaintiffs and defendant Nos.1, 5 to 7. About five years back, a family settlement in respect of land mentioned at letters A and B was entered into, in which, Amar Singh-defendant No.1 declared the plaintiffs to be owners

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and in possession of the land mentioned at letters C & D of the head-note of the plaint, which was fully acted upon between the parties in good faith. Against the aforementioned arrangement/family settlement, defendant No.1-Amar Singh suffered a collusive decree *ibid* in favour of defendant No.5-Baldev Singh in respect of the land mentioned at letters A & B including the suit land given by the aforementioned arrangement/settlement. It was averred that in case, arrangement was not proved, the land mentioned at letters A & B was joint Hindu family coparcenary/ancestral property of the parties and the decree passed in favour of defendant No.5 was illegal, null and void, owing to the fact that a fraud, misrepresentation, much less, undue influence was exercised by defendant No.5-Baldev Singh upon defendant No.1-Amar Singh. Even the decree was required registration under the Registration Act.

The aforementioned suit was contested by the defendants by denying that the property was coparcenary, but alleged being a self-acquired. Even family settlement/arrangement, propounded by the plaintiffs was emphatically denied. It was averred that the decree was valid one and therefore, the plaintiffs had no concern with the same.

The trial Court, on the basis of the pleadings and after noticing the contentions in the replication, framed the following issues:-

1. *Whether the decree passed by the Sub Judge Ist Class, Fatehgarh Sahib in Suit No.464/5.12.1984 titled as Baldev Singh Vs. Amar Singh is collusive, null and void and illegal and against the rights of the plaintiffs? OPP*
2. *Whether the plaintiffs are owners of the property in dispute on the basis of alleged family settlement as mentioend in sub-para (4) of the plaint? OPP*

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3. *Whether the plaintiffs are entitled to the declaration & injunction prayed for ? OPP*
4. *Whether the property in dispute is coparcenary property of the parties? OPP*
- 4-A *Whether the plaintiff No.1 is the son and plaintiff Nos.2 and 3 are daughters of Amar Singh-defendant No.1? OPP*
5. *Relief.*

The plaintiffs in support of their case examined three witnesses and brought on record the documents (Ex.P-1 to Ex.P-20), whereas the defendants examined seven witnesses and brought on record the documents (Ex.D1, Ex.D2, Ex.D3/A, Ex.DW3/B, Ex.DC, Ex.DK, Ex.DJ etc.). However, in rebuttal, the plaintiffs examined PW4-Jawala Singh.

A dispute though arose that the plaintiffs were not the sons and daughters of Amar Singh, which was found to be in favour of the plaintiffs. On the other issues, the trial Court on the preponderance of evidence found that the suit property was coparcenary property and therefore, Amar Singh being *karta* of the family, could not suffer the decree in favour of Baldev Singh and held the decree to be illegal, null and void.

The aforementioned decree was assailed by Baldev Singh and Amar Singh before the lower Appellate Court. The lower Appellate Court, as noticed above, partly allowed the appeal in favour of the defendants by holding that the suit land situated in Village Rajindergarh was self-acquired, but viz-a-viz village Jablera, the judgment and decree of the trial Court was upheld. It is in these circumstances the present regular second appeal at instance of the plaintiffs and cross objections at the instance of the defendants have been filed.

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The appeal and the cross-objections were admitted vide order dated 22.09.2003. However, in cross objections, there was interim order that property in dispute shall not be alienated by the appellants i.e. plaintiffs, during the pendency of the appeal.

Mr. Jai Bhagwan, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the lower Appellate Court has abdicated in not noticing the pedigree table as well as Ex.P-6, mutation of inheritance in respect of a land in favour of Banta Singh son of Charat Singh, father of Amar Singh-defendant No.1 and therefore, the plaintiff being 4th generation in lineage had right by birth. The documents produced on record Ex.P1 to Ex.P-20 completely substantiated the position, which escaped the notice of the lower Appellate Court. The analysis of the documents leads to an irresistible conclusion that Banta Singh had inherited the property from his father Charat Singh. The nature and character of the property being coparcenary, thus, had been proved. The suit land in village Rajindergarh was inherited by Banta Singh from his father Charat Singh, therefore, the same could not be held to be self-acquired property. In such circumstances, decree could not have been executed in favour of Baldev Singh. Decree was wanting registration, thus, urges this Court for allowing of the appeal.

On the contrary, Mr. A.P. Kaushal, learned counsel appearing on behalf of the respondents/cross-objectors submitted that the findings of the lower Appellate Court in partly rejecting the appeal viz-a-viz the land situated in Village Jalbera is not correct interpretation as the plaintiffs miserably failed to place on record original revenue excerpt to show that Banta Singh had inherited the property from Charat Singh. All the revenue

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record shows that the property in favour of Banta Singh was mutated from his father and not grandfather, thus, plaintiff being 3rd generation in lineage, therefore, cannot be said to be having any right by birth. In support of the aforementioned contentions, reference was made to the explanation given in paragraph 221 of the Mulla's Hindu Law, 21st Edition. Ex.DJ reflected that the property was transferred in favour of Banta Singh from third party. It was voluntary and willful act. Self-acquired property can be dealt with by the owner of the property in any manner, thus, urges this Court for dismissal of the appeal and allowing of the cross-objections.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below. The concept of coparcenary property is no longer in dispute. A person, who is 4th generation in lineage and inherits from his great grandfather, definitely has a right by birth. For the sake of brevity, para 221 of the Mulla's Hindu Law (21st Edition) reads as under:-

"221. Ancestral Property. (1) Property inherited from paternal ancestor. All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great-grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth....."

Ex.DJ apparently has escaped the notice of the lower Appellate Court as there was no reference of the same, which shows that the property was mutated in favour of Banta Singh from a third party in respect of land situated in village Jalbera. Similarly, Ex.P6 in respect of Village

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Rajindergarh, it is only Banta Singh, who had been shown to be owner. In other words, plaintiffs miserably failed to prove ownership of the land of Charat Singh, which was inherited in favour of Banta Singh, thus, lineage and connection of inheritance is conspicuously wanting. The original revenue excerpt, for the purpose of claiming a right in the property being coparcenary by birth, has to be brought on record as per the provisions of Sections 31 and 44 of the Punjab Land Revenue Act 1887. The aforementioned view of mine is derived from the judgment passed by this Court in "Banta Singh and others Versus Phuman Singh s/o Jiwand Singh and others" 1972 PLJ 275.

Keeping in view the aforementioned facts, I am of the considered view that lower Appellate Court has abdicated in not referring to Ex.DJ. The lower Appellate Court ought to have allowed the appeal in toto.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in "Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213", wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in "Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others" 2001(4) SCC 262, on applicability of Section 97(1) of CPC is not a correct law, in essence, the

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provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi 's case** (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29] ”*

27. *Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article*

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372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal and cross-objections, aforementioned.

Cross-objections bearing XOJBC No.20-C of 2002 filed by the defendants are allowed and as a consequence thereof, judgment and decree of the lower Appellate Court is set aside with regard to the property situated in village Jalbera. It is held that property at Rajindergarh and Jalbera is not coparcenary property, but a self-acquired property of Amar Singh-defendant No.1, therefore, decree suffered by him in favour of Baldev Singh cannot be said to be illegal, null and void. As a corollary, the appeal filed by the appellants-plaintiffs is dismissed.

Resultantly, Cross-objection bearing XOBJC No.20-C of 2002 is allowed and the appeal bearing RSA No.1384 of 2002 is dismissed.

21.09.2018
Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**