

Sr. No. 362

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

**RSA No.141 of 1993(O&M)
Decided on: 26.03.2018**

Mohinderpal

.....Appellant

versus

Malkiat Singh and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present: Mr. R.N.Moudgil, Advocate
for the appellant.**

**Mr.J.S.Jaidka, Advocate
for respondent No.1.**

Rajbir Sehrawat, J.(Oral)

This is the second appeal filed by the plaintiff who remained unsuccessful before both the Courts below; in his suit for joint possession of the land measuring 6 Kanals 8 Marlas; detailed in the plaint; claiming the same to be the coparcenary property of the plaintiff and defendant Nos. 2 and 3 in the suit.

For the convenience, the parties herein would be referred to as the plaintiff and the defendants as they were described in the original suit.

The brief facts of this case are that the plaintiff/appellant herein had filed a suit for joint possession; averring therein that the plaintiff and defendant Nos. 2 and 3 are the members of the joint hindu family and governed by the Hindu Law in the matter of succession and alienation. As per Hindu Law every coparcener has a right in the property by birth. No one can transfer or alienate any party of the joint hindu family property to

some other person without the consent of the other coparceners or without legal necessity. However, defendant Nos. 2 and 3 executed sale deed dated 03.03.1987 in favour of defendant No. 1 qua the suit land in an unlawful manner and with intention of depriving the plaintiff of his valuable right. Hence prayer was made to declare the sale deed dated 03.03.1987 executed in favour of defendant No. 1 as null and void and for joint possession of the suit property.

On being put to notice defendant No. 1 and defendant Nos. 2 and 3 filed separate written statements. However, the averments in their written statements are similar; to the effect that there was no joint hindu family and the property in dispute was not the coparcenary property. The plaintiff and defendants No. 2 and 3 were living separately since long and were having separate mess and residence. It was further claimed that being agriculturist of Punjab they are governed by the custom under which father remains absolute owner of the property and his heirs get the property only after his death; making them the absolute owners in the turn. It was further pleaded that the land in question was self-acquired property in the hands of defendant Nos. 2 and 3. The plaintiff had no concern therewith. Hence defendant Nos. 2 and 3 were entitled to alienate the suit land and they have rightly alienated the same for consideration.

On the pleadings of the parties, the Trial Court framed the following issues:-

- “(1) Whether the property indispute is Hindu Joint family coparcenary property? OPP.*
- (2) Whether the sale deed executed by defendants Nos. 2 and 3 in favour of defendant No. 1 pertaining to suit land is liable to be set aside?OPP*

- (3) *Whether the plaintiff is entitled to joint possession of the suit land?OPP*
- (4) *Whether the plaintiff has no locus standi to file the present suit?OPD.*
- (5) *Whether the plaintiff is estopped from filing the present suit by his act and conduct?OPD.*
- (6) *Whether the suit is not maintainable in the present form?OPD.*
- (7) *Relief.”*

Parties led their respective evidence.

After hearing the parties and appreciating the evidence, the Trial Court held that the plaintiff has failed to prove the fact that the suit property was a coparcenary property. No evidence in the form of revenue record has been led on file to prove the character of the suit property to be coparcenary property. On the contrary, the father of the plaintiff; who has been examined as PW-1 in the suit and the plaintiff himself; who appeared as PW-3; has admitted that defendant Nos. 2 and 3 were living separately for quite long time. Therefore, the stand of the plaintiff can not be believed that the property in dispute is the joint hindu family property and coparcenary property. Accordingly, the suit of the plaintiff was dismissed. Aggrieved against the same, the plaintiff filed the appeal before the lower Appellate Court.

Before the lower Appellate Court an application for leading additional evidence was moved which was allowed. Certain revenue record was ordered to be taken on record and report was called from the Trial Court as to the nature of the property; based on the freshly brought evidence on record. However, the Trial Court in its report again held that the plaintiff had failed to prove that the suit property is a coparcenary property. The

plaintiff filed objection against that report also before the lower Appellate Court.

However, the lower Appellate Court also dismissed the appeal filed by the plaintiff. While dismissing the appeal, the lower Appellate Court held that the plaintiff and his father both have admitted that they do not constitute any joint hindu family with the defendants and that they were residing separately since a long time. Still further the lower Appellate Court held that even the bare perusal of the revenue record shows that mutations regarding the property have been entered in the revenue record with distinct and specified shares of different parties; who were claimed to be members of the joint hindu family by the plaintiff. Not only this even a Will was introduced by one of the alleged member of the joint family to bequeath his share. Still further, the other alleged members of the joint hindu family had even sold their shares to the outsiders. Even defendant Nos. 2 and 3 were recorded in the revenue record as owner in the property to the extent of 1/4th share; on the basis of mutation entered in their name on the death of their father Hari Ram. Accordingly, the lower Appellate Court held that since the plaintiff, the defendants and other alleged members of joint hindu family are residing separately, therefore, the element of jointness is totally missing in the case. Even the distinct shares of the parties are specified in the revenue record. Accordingly, the property has not been left to be governed by right of survivorship. Therefore, the lower Appellate Court held that even as per the revenue record the suit property is not a coparcenary or joint hindu family property. Hence the appeal filed by the plaintiff was dismissed.

While arguing the case, learned counsel for the appellant has reiterated his submission that the suit property is a joint hindu family

property. The plaintiff and the defendants constitute a coparcenary and hence all of them have got unspecified share in the coparcenary property. Defendants No. 2 and 3 could not have transferred any portion out of the coparcenary property. Hence the sale deed is bad; being detrimental to the interest of the plaintiff.

On the other hand, learned counsel for the defendants/respondents have submitted that there is absolutely nothing on record to show either the existence of joint hindu family or the status of the suit property to be a coparcenary property. It is reiterated by learned counsel that the parties had been residing separately; having separate mess as well; since long. The property has come to defendant Nos. 2 and 3 by way of mutation of inheritance of their father. Hence it is their self-acquired property in their hands. Defendant Nos. 2 and 3 had every right to alienate the land. Accordingly no fault could be found in the sale deed.

Having heard learned counsel for the parties and after perusing the record with their able assistance, this Court is of the considered opinion that the argument raised by learned counsel for the appellant is liable to be noticed only to be rejected. Both the Courts below have recorded categorical finding that there is no jointness of residence and mess between the parties. The plaintiff and defendant Nos. 2 and 3 have been residing separately for quite long time. This fact has been admitted even by the plaintiff and his father while appearing as witnesses in the case. Hence it can not be said that there exists a joint hindu family constituted by the plaintiff and defendant Nos. 2 and 3. Therefore, there can not be any presumption attached to the properties of the plaintiff and defendant Nos. 2 and 3 to be the joint hindu family property/coparcenary properties.

The plaintiff initially had not led any documentary evidence to substantiate his claim regarding the property being coparcenary property. Subsequently, he has brought on record some revenue documents to show the inheritance of the property. However, even bare perusal of the revenue records relied upon by the plaintiff show that the property has lost character of being coparcenary property long ago. The records show that the parties have been inheriting it as per the succession and not by survivorship. Even the instrument of Will was introduced by one of the alleged members of the joint hindu family; who also earlier had a share in the joint properties, besides the plaintiff and defendant Nos. 2 and 3. Some of the alleged members of the joint hindu family, as claimed by the plaintiff as per the pedigree table, have even sold their shares to the persons outside the joint hindu family. Even defendant Nos. 2 and 3 have got this property by way of inheritance from their father Hari Ram in the form of defined 1/4th share. Likewise all the other parties are also shown in the revenue record to be having definite distinct and defined shares being inherited from their father. Hence as per the revenue record it is clear that shares of the parties have been crystalized long ago. Therefore, the property can no longer be said to be a coparcenary property, where the indefiniteness of the undivided interest of the coparceners is one of the essential characters. Needless to say that mere joint property and coparcenary property are two different kinds of holdings. Any severance of shares breaks the coparcenary. The entire transactions and entries reflected in the revenue record clearly show the intention of the parties qua severance of status of the property since long. Hence both the Courts below have not committed any illegality or perversity in holding that the suit property is no longer coparcenary property in the

hands of defendant Nos. 2 and 3. This Court finds itself in full agreement with the finding recorded by the Courts below.

Since defendant Nos. 2 and 3 were the absolute owner of the property to the extent of their share, therefore, they had every right to dispose of or alienate their share of the property as per their desire. They have executed the sale deed in favour of defendant No. 1 for a consideration. Hence the sale deed in favour of defendant No. 1, by any means, can not be held to be null and void. The findings of the Courts below in this regard also deserve to be upheld.

No other argument was raised by learned counsel for the parties.

In view of the above, finding no illegality or perversity in the findings and in the judgments and decrees passed by the Courts below, the present appeal is dismissed being devoid of any merits.

26th March, 2018

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*