

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

1. RSA No.2874 of 1994 (O&M)
Date of decision : 24.04.2018

Paul Singh

...Appellant

Versus

Kaka Singh (deceased) through his LRs and others

...Respondents

2. RSA No.214 of 1995 (O&M)
Date of decision : 24.04.2018

Kaka Singh (deceased) through his LRs

...Appellant

Versus

Paul Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Paramjit Batta, Advocate for the appellant
(In RSA No.2874 of 1991)
for respondent No.1 (In RSA No.214 of 1995)

Mr. G.S. Nagra, Advocate for respondent No.1
(In RSA No.2874 of 1994)
for appellant (In RSA No.214 of 1995)

ANIL KSHETARPAL, J.

This judgment shall dispose of RSA No.2874 of 1994 and
RSA No.214 of 1995 filed by the plaintiff and defendant No.1 against a

common judgment passed by learned First Appellate Court.

The plaintiff-appellant in RSA No.2874 of 1994 filed a suit for passing a decree of declaration declaring the plaintiff to be the owner in joint possession of 1/5th share of the land measuring 145 kanals and 15 marlas and 7 marlas. The plaintiff also sought declaration that a Civil Court decree passed on 03.05.1982 is null and void and not binding on the rights of the plaintiff while claiming that the suit property is Ancestral Joint Hindu Family Property of the parties and the parties are coparceners. Jangir Singh father of the parties was *Karta* of the family and use to manage the property.

Defendant No.1 contested the suit and pleaded that Jangir Singh in a family settlement had given him 1/3rd share in the land measuring 145 kanals and 13 marlas and the aforesaid family settlement was acknowledged in the Civil Court decree dated 03.05.1982. It was further claimed that Jangir Singh was the sole owner in possession of the land measuring 41 kanals and 13 marlas.

A separate written statement was filed by defendant Nos.2 to 4. The defendants claimed that they are entitled to inherit 3/4th share in the property of their father and the decree is liable to be set aside.

Learned trial Court decreed the suit filed by the plaintiff after returning a finding that the property was Joint Hindu Family Ancestral Coparcenary Property and the plaintiff had a share in it by birth. Thus, the Court decreed the suit declaring the plaintiff to be in joint possession of 2/15th share in the land measuring 145 kanals and 15 marlas and 2/45th

share in the land measuring 7 marlas while declaring that the Civil Court decree dated 03.05.1982 was held null and void and not binding on the rights of the plaintiff.

Defendant No.1-appellant filed the first appeal. Learned First Appellate Court modified the decree and declared that the plaintiff would be entitled to 1/5th share in the land measuring 48 kanals and 13 marlas which comes to 9 kanals and 15 marlas. Hence, the plaintiff and defendant No.1 have filed cross appeals.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the records requisitioned.

A careful reading of the judgment passed by the learned First Appellate Court establishes that the learned First Appellate Court has not chosen to decide whether the property is coparcenary property or not. The plaintiff had based its claim on the basis of the property being coparcenary property and the plaintiff having right in the same by birth. However, unfortunately, First Appellate Court has not returned any finding thereupon. Learned First Appellate Court has returned a finding that the property is ancestral property. Learned First Appellate Court has also overlooked the fact that the plaintiff admittedly is not residing in the village where Jangir Singh and defendant No.1 use to reside. It is admitted case of the plaintiff that he is living with the family of Mukhtiar Singh for the last 14-15 years before the filing of the suit in a different village. Learned trial Court has held that the plaintiff is from a different mother

i.e. Harnam Kaur, although, the father is same i.e. Jangir Singh whereas defendant No.1 is son of Bhagwan Kaur, of course son of Jangir Singh. It is also the case of defendant No.1 that the plaintiff is not son of Jangir Singh.

Still further, on reading of the judgment passed by learned First Appellate Court, it is apparent that the learned First Appellate Court has not given any finding issue-wise. Except issue Nos.4 and 5, remaining issues have not been decided.

On the one hand, learned counsel for the appellant claims that the property is a coparcenary property. He has relied upon excerpt produced before the trial Court, whereas, on the other hand, learned counsel for defendant No.1-appellant in RSA No.214 of 1995 has argued that excerpt is not proved on the Court file as the official who had prepared the excerpt was not examined. He has further pointed out that the issue of limitation has not been decided by the First Appellate Court.

Keeping in view the aforesaid facts and after noticing that the plaintiff and defendant No.1, both are aggrieved of the judgment passed by the First Appellate Court and learned First Appellate Court has failed to decide whether the property is a coparcenary property or not, this Court is of the consider opinion that the First appellate Court should be directed to re-decide the appeal while adjudicating upon all the issues after re-appreciating the evidence available on the file.

Therefore, both the appeals filed by the parties are accepted.

The judgment and decree passed by First Appellate Court is

set aside and the case is remitted back to the learned First Appellate Court to re-decide the entire matter in accordance with law.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

24.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No