

In the High Court of Punjab and Haryana at Chandigarh

**RSA-1763 of 2009(O&M)
Date of Decision:31.10.2018**

Kulbhushan and others

---Appellants

vs.

Dharampal and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Nikhil Sabharwal, Advocate
for the appellants

Mr. A.P.S.Sandhu, Advocate
for respondent No. 1

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit filed by the appellants-plaintiffs claiming right in the suit property i.e. 1/3rd share in land measuring 617 kanal 8 marlas situated in village Durina, Tehsil and District Jhajjar by assailing the judgment and decree dated 7.11.1997 passed in civil suit No. 977 of 1997 and mutation No. 285 dated 22.12.1998 sanctioned on the basis thereof was dismissed by the trial court vide judgment and decree dated 10.10.2007 that came to be affirmed in appeal by the District Judge,

Jhajjar.

The plaintiffs are the sons and widow of Dharampal son of Jai Ram. The plea of the appellants-plaintiffs is that Dharampal was married with plaintiff No. 3 and plaintiffs No. 1 and 2 were born out of wedlock of Dharampal and Smt. Phoolwati Devi, constituted a joint Hindu family consisting of himself and the plaintiffs headed by defendant No. 1 being 'karta' of the family. Plaintiffs No. 1 and 2 being members of joint Hindu family have a birth right in the property of joint Hindu family. The suit land was purchased by Jai Ram grand father of plaintiffs No. 1 and 2 in the name of defendant No. 1. Defendant No. 2 is a keep in the house of defendant No. 1. She claims herself to be wife of defendant No. 1 but in the life time of legally wedded wife i.e. plaintiff No. 3, second marriage is void *ab initio* and second wife cannot claim right of inheritance.

Defendant No. 2 filed civil suit No. 977 of 1997 against defendant No. 1 regarding suit land which was decreed vide judgment and decree dated 7.11.1997 on the basis of admission made by defendant No. 1 and decree dated 7.11.1997 is illegal, null and void and not binding upon rights of the plaintiffs. Defendant No. 1 could not effect any family settlement with defendant No. 2 in absence of plaintiffs nor there can be any family arrangement between the defendants as defendant No. 2 is not member of the joint Hindu family of defendant No. 1. The alleged compromise Ex. C-1 in civil suit No. 977 of 1997 is false, fictitious and bogus document and the same does not create any right, title or interest in the property in dispute in favour of defendant No. 2. They have claimed that plaintiffs No. 1 and 2 have 1/3rd share each in suit land by dint of their

birth in the family of defendant No. 1. The suit land was purchased by grandfather of plaintiffs No. 1 and 2 in the name of defendant No. 1 from earnings of the joint family as grandfather of the plaintiffs was big businessman of the area.

The defendants filed the written statement seriously contesting claim of the plaintiffs-appellants. They have denied the suit land to be joint Hindu family property or plaintiffs No. 1 and 2 being entitle to a share in suit land by way of birth. It is asserted that the plaintiffs have no right or concern with the suit land which was self acquired property of defendant No. 1 and defendant No. 2 has become owner thereof on the basis of judgment and decree dated 7.11.1997.

The controversy between the parties led to framing of issues, reproduced in para 5 of the judgment of trial court. The parties were permitted to adduce evidence in support of their respective contention. Having heard counsel for the parties in the light of materials on record, the trial court refused to accept plea of the plaintiffs-appellants that suit land was joint Hindu family or coparcenary property in which plaintiffs No. 1 and 2 being sons of Dharampal acquired right by way of birth or entitle to challenge the judgment and decree dated 7.11.1997 passed on the basis of compromise Ex. C1. As has been noticed hereinbefore, the appeal preferred by unsuccessful plaintiffs-appellants did not find favour with the District Judge, Jhajjar.

Counsel for the appellants would argue that in para 4 of the plaint, a specific plea was raised by the plaintiffs that suit land was thrown in common hotch potch by defendant No. 1 but in reply to this para by the

defendants, there is no specific denial and the same amounts to admission on the part of defendants. It is further argued that as defendant No. 1 had thrown the suit land in common hotch potch and as a result became property of joint Hindu family, plaintiffs No. 1 and 2 being sons of Dharampal are entitle to 1/3rd share of Dharampal in total land measuring 617 kanal 8 marlas purchased by Jai Ram in the name of his three sons to the extent of 1/3rd share each. It is argued with vehemence that as transfer of suit land in favour of defendant No. 2 on the basis of judgment and decree dated 7.11.1997 is not for legal necessity or benefit of estate, the judgment and decree are liable to be set aside at least to the extent of 2/3rd share to which plaintiffs No. 1 and 2 are entitle to.

Counsel representing the respondents has supported findings recorded by the courts with the submission that there is no error much less perversity in consistent findings recorded by the courts that call for intervention in regular second appeal. It is further argued that allegations raised in para 4 of the plaint with regard to defendant No. 1 having thrown the suit land in common hotch potch are quite vague, therefore, the appellants cannot derive any advantage thereof. Further submitted that in sub para (c) of para 6 of the plaint, it has been averred that the property in dispute was purchased by Jai Ram in the name of defendant No. 1 which was later thrown in common hotch potch by defendant No. 1 prior to birth of plaintiffs No. 1 and 2 meaning thereby that there was some other joint Hindu family existing prior to birth of plaintiffs No. 1 and 2 but no evidence has been adduced by the plaintiffs/appellants as to who constituted the said joint Hindu family or what were the assets and properties belonging to said

joint Hindu family. In addition, it is argued that if any such joint Hindu family was existing before birth of plaintiffs No. 1 and 2 and the same ceased to exist, it can be construed that assets of said joint Hindu family were partitioned amongst its members, therefore, plaintiffs No. 1 and 2 otherwise cannot claim any right in suit land which already stands transferred by defendant No. 1 in favour of defendant No. 2 on the basis of compromise which cannot be challenged by way of separate suit in view of the bar created under Order 23 Rule 3(A) of CPC.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, Smt. Phoolwati Devi was married to Sh. Dharampal and out of their wedlock, plaintiffs No. 1 and 2 were born. The plaintiffs have raised two inconsistent pleas, in order to claim suit land to be joint Hindu family property in which plaintiffs No. 1 and 2 acquired right by way of birth. The first plea raised by plaintiffs is that suit land was purchased by Sh. Jai Ram, father of defendant No. 1 in his name by investing income from joint Hindu family funds. Undoubtedly, the sale deed in favour of Dharampal and his two brothers with regard to purchase in the year 1967 has not seen the light of day. Counsel for the appellants has fairly conceded that there is no material to substantiate plea of the plaintiffs that suit land in the name of Dharampal was purchased by Sh. Jai Ram much less with the funds of joint Hindu family. That being so, findings of the courts negating plea of the appellants that suit land was joint Hindu family property having been purchased with joint family funds are liable to be affirmed.

The plaintiffs have raised contradictory pleas in order to assert the suit land to be joint Hindu family property. On one hand, they have claimed that it was purchased with joint Hindu family funds but on the other hand, it has been claimed that this property was thrown in common hotch potch by defendant No. 1.

The question for consideration is, whether the appellants have raised a clear and specific plea with regard to suit land having been thrown in common hotch potch by defendant No. 1 with intention to divest himself of his right in self acquired property. The pleadings in para 4 of the plaint are quite vague and uncertain. No date, month or year when the suit land was thrown in common hotch potch has been mentioned. There is no plea raised by the appellants as to who constituted the joint Hindu family either prior to the suit land being thrown in common hotch potch by defendant No. 1 or immediately thereafter in order to show who became entitle to suit land being a part of joint Hindu family property. There is no evidence on record that Dharampal ever constituted any joint Hindu family with his father Jai Ram or his brothers. There is no plea raised by the plaintiffs as to when Dharampal performed marriage with Smt. Phoolwati Devi or Phoolwati Devi was a member of family of Dharampal when he purportedly thrown the suit land in common hotch potch of joint family. The plaintiffs, in the head note of the plaint, have claimed that they are residents of House No. 1956, Chowk Suiwala Diryagang, New Delhi and defendant No.1 is described to be resident of Hiran Kudna, Delhi State meaning thereby that the plaintiffs and defendant No. 1 were not residing together at the time of filing of the suit. No specific pleadings have been raised with regard to date of marriage

of Dharampal, date of birth of plaintiffs No. 1 and 2 or that they remained residing together being members of joint Hindu family or the suit land was being treated as such by defendant No. 1. In this view of the matter, the plaintiffs cannot derive any advantage from the fact that the said plea has not been specifically denied by the defendants. As has been rightly held by the Appellate Court, the plaintiffs have failed to adduce sufficient much less cogent and convincing evidence to substantiate their plea that suit land was joint Hindu family property and the same could not be transferred by defendant No. 1 without legal necessity or for benefit of estate. That being so, challenge to the judgment and decree dated 7.11.1997 passed on the basis of compromise by claiming any right through Sh. Dharampal is not maintainable in view of bar created under Order 23 Rule 3(A) of CPC.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs. As the appeal has been decided on merits, applications for condonation of delay in refiling and filing the appeal are of academic relevance.

(Rekha Mittal)
Judge

31.10.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No