

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5168 of 2012(O&M)

Date of Decision: November 28th, 2018

Jagtar Singh

---Appellant

vs.

Surinder Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mohd. Yousaf, Advocate
for the appellant
Mr. Anil K. Garg, Advocate
for Mr. N.S. Swaich, Advocate
for the respondents

Rekha Mittal, J.

The present appeal directly challenges against the judgment and decree dated 13.9.2012 passed by the first Appellate Court whereby appeal preferred by the respondents against the judgment and decree dated 9.6.2008 passed by the Civil Judge (Junior Division), Rajpura was partly allowed, judgment and decree dated 9.6.2008 have been modified and respondents No. 1 to 5 have been declared to be joint owners to the extent of 5/24 shares i.e. 1/24 share each of respondents No. 1 to 5.

The facts relevant for disposal of present appeal are that the respondents-plaintiffs, daughters of Munshi filed suit for joint possession claiming 1/24 share each in land measuring 43 bigha 2 biswas, detailed in

head note of the plaint on the basis of natural succession. It is averred that Munshi expired on 21.8.1994 and he had 1/3rd share in suit land as co-owner. His estate was to devolve upon his three sons and five daughters in equal shares by succession. Raghbir Singh-defendant No. 3 has also expired and he is survived by his widow, two sons and two daughters. The plaintiffs were under the impression that estate of Munshi in the ordinary course of events might have been mutated in the names of his sons and daughters who are legal heirs. It has come to knowledge of the plaintiffs that partition proceedings are pending in the court of Tehsildar, Rajpura in between defendants in which the plaintiffs have not been made parties. It created a doubt in the minds of plaintiffs and after verification, it has been found that names of plaintiffs do not figure in the revenue records as heirs of Munshi.

Defendants No. 1 and 2 filed the written statement admitting claim of the plaintiffs/respondents. Defendant No. 3 Raghbir Singh (since deceased) represented by his LRs including appellant Jagtar Singh seriously contested claim of the respondents-plaintiffs. By way of preliminary objections, it is averred that Raghbir Singh filed suit for joint possession against Ujagar Singh and others regarding suit property. Suit was decreed and decree was upheld upto the High Court of Punjab and Haryana. Meeto, respondent No. 5 appeared in the said suit and made a statement that suit property is ancestral coparcenary property and three sons of Munshi have birth right in the suit property. Plaintiffs have filed the present suit at the behest of defendant No. 1 with a view to prolong partition proceedings as such the plaintiffs are estopped from filing the present suit

by their own act, conduct and acquiescence. All other material averments of the plaint on the basis whereof plaintiffs have staked their claim to the suit property were denied. However, it has been admitted that Munshi expired on 21.8.1994.

Both the courts have consistently held that the suit property was ancestral coparcenary property in the hands of Munshi. The trial court decreed suit of the plaintiffs to the effect that they are entitled to joint possession to the extent of 5/96 share i.e. 1/96 share each in suit land measuring 43 bigha 2 biswas qua share of Munshi by relying upon the provisions of Section 6 of the Hindu Succession Act, 1956 (in short “the Act”) particularly proviso thereto that deals with devolvment of interest of a deceased in Mitakshra coparcenary property who had left behind a female specified in class (1) of the schedule or a male relative specified in that class who claims through such female relative.

The Appellate Court modified the judgment and decree passed by the trial court and held the respondents entitle to share equal to their brothers by holding that amendment in Section 6 of the Act by Act of 2005 has retrospective effect, therefore, the respondents being daughters of Munshi became coparceners in the property along with their brothers (three sons of Munshi), therefore, entitle to joint possession to the extent of 5/24 share i.e. 1/24 share each of the plaintiffs.

The questions that require determination in the present appeal are:-

1. Whether the Amendment Act of 2005 whereby Section 6 of the Act was amended has retrospective effect or otherwise?

2. Even if the amendment does not have the retrospective effect, whether the respondents can assert their right to claim 1/24 share each in view of the fact that partition proceedings qua land left behind by Munshi are admittedly pending before the revenue authorities?

Counsel for the appellant would urge that Amendment Act of 2005 whereby the daughters have been given the status of coparcener in the ancestral coparcenary property does not have retrospective effect or to say that it has only prospective effect. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **Parkash and others vs. Phulavati and others 2015(4) RCR (Civil) 952**. It is vehemently argued that since the amendment by Act 39 of 2005 has prospective effect, the appellate court has grossly erred by holding that the amendment has retrospective effect and the respondents-plaintiffs being the daughters of Munshi are entitle to 1/24 share each in land, held to be ancestral coparcenary property in the earlier litigation initiated by Raghbir Singh against defendants No. 1 and 2 in which Meeto defendant No. 5 appeared in the witness box and admitted the suit land to be ancestral coparcenary property. In addition, it is argued that findings recorded by the trial court accepting plea of the contesting defendants that suit land is ancestral coparcenary property in the hands of Sh. Munshi were not challenged by the respondents before the first Appellate Court who on the contrary has asserted their right to 1/24 share each by claiming suit land to be ancestral coparcenary property, therefore, findings of the trial court in respect of status of suit land have attained finality and are not amenable to challenge

before this Court in regular second appeal.

Counsel representing the respondents-plaintiffs has supported judgment of the first Appellate Court upholding plea of the respondents-plaintiffs that they are entitle to 1/24 share each in land left behind by Munshi being five class-I heirs out of total 8 left behind by the deceased.

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

Indisputably, the previous litigation instituted by Raghbir Singh to challenge sale by Munshi in favour of Ujagar Singh on the premise that suit land was ancestral coparcenary property in the hands of Munshi was decided in favour of Sh. Raghbir Singh and the findings have been affirmed in second appeal preferred by Ujagar Singh and another vide judgment Ex. D-5. Admittedly, the plaintiffs-respondents were not a party to the earlier litigation initiated by Raghbir Singh against his brothers Ujagar Singh and Jit Singh. Indisputedly, there is no challenge to findings of the trial court in the present lis that the suit land was ancestral coparcenary property in the hands of Munshi. That being so, the controversy in the present appeal confines to implication of Section 6 of the Act both unamended and amended..

Sh. Munshi passed away in the year 1994. Amending Act 39 of 2005 came into force in the year 2005. A relevant extract from Section 6 of the Act after its amendment in 2005, reads as follows:-

“6. Devolution of interest in coparcenary property.-

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.”

Hon'ble the Supreme Court in **Prakash and others' case**

(supra) has held to the following effect:-

(i) An amendment of a substantive provision is always prospective unless either expressly or by necessary intendment it is retrospective.

(ii) Contention that the Amendment should be read as retrospective being a piece of social legislation cannot be accepted.

(iii) Rights under the amendment are applicable to living daughters of living co-parceners as on 9th September, 2005 irrespective of when such daughters are born.

(iv) Disposition or alienation including partitions which may have taken place before 20th December, 2004 as per law applicable prior to the said date will remain unaffected -Any transaction of partition effected thereafter will be governed by the Explanation.”

However, proviso appended to Sub Section 1 of Section 6 of the Act says that nothing contained in Sub-Section (1) shall affect or

invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004. In the case at hand, alienation or disposition by Sh. Munshi became subject matter of litigation initiated by Raghbir Singh and the same was set aside and the judgment has attained finality between the parties to civil suit No. 774 of 24.9.1994. Indisputably, the partition proceedings between three sons of Munshi are pending before the revenue courts when the suit was instituted by daughters of Sh. Munshi claiming right in suit land to the extent of 1/24 share each.

The question for consideration is whether in absence of any disposition, alienation or finalization of partition proceedings qua land left behind by Sh. Munshi, the respondents-plaintiffs can claim equal share being coparceners by invoking Section 6, amended by Act 39 of 2005. This question came up for consideration before Hon'ble the Supreme Court in **Prema vs. Nenje Gowda and others 2011(3) RCR (Civil) 215** and **Danamma @ Suman Surpur and another vs. Amar and others 2018(1) RCR (Civil) 863.**

In **Danamma @ Suman Surpur and another's case (supra)**, Hon'ble the Supreme Court has held in para 26 that the right to partition has not been abrogated. The right is inherent and can be availed of by any coparcener, now even a daughter who is a coparcener. It has further been held by relying upon judgment of Hon'ble the Apex Court in **Ganduri Koteshwaramma and another vs. Chakiri Yanadi and another 2011(4) RCR (Civil) 916** that rights of daughters in coparcenary property as per amended Section 6 are not lost merely because a preliminary decree has

been passed in a partition suit. So far as the partition suits are concerned, the partition becomes final only on the passing of a final decree. Where such situation arises, the preliminary decree would have to be amended taking into account change in the law by the amendment of 2005. In the light of enunciation laid down in **Danamma @ Suman Surpur and another's case (supra)** since in the present case partition proceedings were pending before the revenue authorities at the time of institution of the suit, the respondents-plaintiffs are entitle to claim their share on the basis of amended Section 6 of the Act. The matter would have been different had the land been alienated by Munshi or the partition proceedings been finalized because in that eventuality, the respondents-plaintiffs would not have been entitle to invalidate that alienation, disposition or partition by claiming right as a coparcener on the basis of Section 6 amended in the year 2005. In this view of the matter, it can safely be held that though findings of the first Appellate Court that amended Section 6 has retrospective effect are not correct when examined in the light of judgment in **Prakash and others' case (supra)**. However, in the facts and circumstances of the case, the respondents-plaintiffs are entitle to claim share in the suit property being coparceners as partition proceedings were pending at the time of institution of the suit. That being so, right of the respondents to the extent of 1/24 share each determined by the first Appellate Court cannot be faulted with.

In view of what has been discussed hereinabove, finding no

merit, the appeal fails and is accordingly dismissed, leaving the parties to
bear their own costs.

(Rekha Mittal)
Judge

November 28th,2018
paramjit

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