

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.2221 of 2013

Date of Decision.13.03.2018

Biro and another

.....Appellants

Vs

Sube Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate
for the appellants.

Mr. Balram Prasher, Advocate for
Mr. Jagmohan S. Ghumman, Advocate
for respondent No.1.

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AMIT RAWAL J.(ORAL)

The appellant-defendant No.2 and 4 are in regular second appeal against the judgment and decree dated 8.3.2011 whereby the suit of the respondent-plaintiff, Sube Singh, claiming declaration and permanent injunction has been decreed holding him to be owner and co-sharer in possession to the extent of 2/5th share in the land and upheld by the lower Appellate Court vide judgment and decree dated 28.2.2013.

The facts emanated from the pleadings of the parties are that the plaintiff instituted the suit for declaration to the effect that he is co-sharer to the extent of 2/5th share in the land described in Para 7 (a) and (b) of the plaint with consequential relief of permanent injunction on the premise that Ram Pat son of Richpal was married with Sarti Devi and from the wedlock of Ram Pat, three children namely Umed defendant No.1, Ram Rai defendant No.3 and Biro defendant No.4 were born. The elder brother of Ram Pat was Shri Pehlad who was married with Sarli Devi. Pehlad died and his widow Sarli Devi entered into Kareva marriage with Ram Pat, who

was already married with Sarti Devi and marriage was subsisting. However, out of the wedlock of Sarli and Pehlad no child was born. Two children namely Sube Singh plaintiff and defendant No.2 Prem were born out of the wedlock of Ram Pat and Sarli Devi. Both Sarli Devi and Sarti Devi died during the life time of Ram Pat and Ram Pat died in the month of November, 2003. The plaintiff, defendant No.1 and their late father Ram Pat, according to the averments in the plaint, formed a joint Hindu family. Since it was a co-parcenary ancestral property situated in village Chandu and village Budhera, from the income of the aforementioned property, Ram Pat purchased the agricultural land detailed in Para (b) of the plaint, which was put in hotch potch and constituted the joint Hindu family property. According to the averments made in the plaint, the land described in para 7 (a) of the plaint was devolved from Asha to Natha to Ganga Sahi to Richpal and Sulatan and to Ram Pat and Pehlad by way of natural succession. However in the agricultural land, plaintiff and defendant No.1 acquired $\frac{1}{3}^{\text{rd}}$ share each by birth as Ram Pat had $\frac{1}{3}^{\text{rd}}$ share. Since the defendants did not accede to the request of the plaintiff to get the land mutated as per their share, the plaintiff instituted the suit.

The aforementioned suit was contested by taking usual objections qua maintainability, concealment, locus standi and estoppels etc. On merits, it was admitted that Ram Pat son of Richpal and father of the parties, was sole owner and in exclusive possession, in essence, it was denied that Ram Pat formed a joint Hindu Family. The factum of having no source of income except yield of the land was also emphatically denied. It was stated that on the demise of Ram Pat, the property was required to be

inherited in equal share i.e. $\frac{1}{5}^{\text{th}}$ share each.

Replication to the written statement was also filed and on the basis of the pleadings, the trial Court framed the following issues:-

- “1. Whether the plaintiff is co-owner in possession of suit property to the extent of 2/5th share? OPP*
- 2. Whether the plaintiff is entitled to the injunction as prayed for? OPP*
- 3. Whether the plaintiff has not been properly valued for court fee and jurisdiction? OPD*
- 4. Whether the suit has not been properly valued for court fee and jurisdiction? OPD*
- 5. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 6. Whether the plaintiff is stopped from filing the present suit by his own act and conduct? OPD*
- 7. Whether the suit is liable to be rejected under Order 7 Rule 11 CPC? OPD*
- 8. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 9. Whether the suit is not maintainable in the present form? OPD*
- 10. Relief.”*

In order to support his case, the plaintiff examined Ved Pal Moharar as PW1, plaintiff himself appeared as PW2 and placed on record copy of jamabandi for the year 1997-98 as Ex.P1, jamabandi for the year 2000-01 as Ex.P2, jamabandi for the year 1995-96 as Ex.P2, copy of mutation as Ex.PW1/A, copy of mutation Ex.P4, copy of mutation No.24

Ex.P5, copy of mutation Ex.P6 and Ex.7, copy of mutation No.13 Ex.P8 and Ex.P9, copy of Sijra Nasab Ex.P10 and Ex.P11 and closed evidence. On the other hand, defendants examined Umed as DW1 and tendered into evidence copy of the order passed in case titled as “Sube Singh Vs. Umed Singh” as Ex.D1, certified copy of order dated 3.3.2008 Ex.D2, certified copy of order dated 31.3.2009 Ex.D3, certified copy of order dated 8.4.2010 Ex.D4 and closed evidence.

The trial court on the preponderance of evidence decreed the suit and the appeal preferred against the same was also dismissed by the lower Appellate Court.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellants submitted that the judgment and decrees of the Courts below are not sustainable in the eyes of law, for, issue No.3 to 9 were pressed at the time of arguments of the appellant-defendants. Moreover, the finding of the trial Court on issue No.1 and 2 is wholly erroneous and contrary to the settled legal provisions.

The entire approach of the Court below in recording finding that by way of notional partition all the three members namely Ram Pat, Sube Singh plaintiff and Umed Singh defendant No.1 would be entitled to 1/3rd share each and after the death of Ram Pat his share will be divided amongst all the five members of the family is wholly erroneous. The Courts below completely failed to take into consideration that the parties to the suit are *Ahir* by caste of Gurgaon and concept of coparcenary joint Hindu family is alien to them. The Courts below also failed to take into consideration that Ram Pat, father of the parties, had purchased certain land during his life time, which was put into hotchpotch, thus, the entire property was not

ancestral. In view of Section 8 of the Hindu Succession Act, 1956, daughters being Class-I heirs are entitled to 1/5th share in the entire property, thus, urges this Court for setting aside judgments and decrees under challenge by formulating the substantial questions of law as carved out in the memorandum of appeal.

Per contra, Mr. Balram Prashar for Mr. Jagmohan S. Ghuman, learned counsel appearing for respondent No.1 submitted that concurrent finding of fact and law cannot be interfered with, for, it has been proved on record that the property was ancestral as the *intkhab* PW1/A has been proved through the testimony of PW1, Ved Pal Moharar, Patwari. There was a categorical admission of Umed Singh, DW1 that Richpal @ Bula was grandfather of plaintiff and defendant was owner in possession of suit property and prior to them Ganga Sahai, father of Richpal was owner of the suit property, therefore, the suit property was ancestral in the hands of Ram Pat, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Goel. It has been proved on record through the testimony of PW1, Ved Pal Moharar Patwari that the property at the hands of Ram Pat was ancestral. Sube Singh was born out of marriage of Ram Pat and Sarli Devi. He would have right to succeed to the estate of Ram Pat even if the marriage was illegal or void. It has also been proved on record that Ganga Sahai father of Richpal was the owner and therefore, there were three generations. The plaintiff, Sube Singh, when entered into witness box had reiterated the pleadings in his affidavit and despite cross-examination, defendants failed to extract anything contrary to the *intkhab* and oral deposition of the

plaintiff corroborated by mutation No.24 dated 9.12.1994 and 222 dated 25.9.1936. The defendant No.1, Umed Singh, when appeared in the witness box had admitted that Richpal @ Bula was grandfather of plaintiff and defendant, thus, in my view, the argument of Mr. Goel that Sube Singh had no right in the property is devoid of merit. Even the son born out of marriage, which has been proved to be illegal, would have a right to succeed. All these facts have been taken care by both the Courts below while rendering the finding under challenge.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees under challenge as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 13, 2018

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No