

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

RSA No.4926 of 2016 (O&M)

Date of decision: 06.04.2018

Parampal and others

... Appellants

Versus

Nirmal Singh (deceased) thr. LRs and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. K.K. Garg, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

CM No.12848-C of 2016

Heard.

Allowed as prayed for. Delay of 433 days in re-filing the
appeal stands condoned.

Main Case

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by the appellants/plaintiffs seeking declaration that they are owners in possession of 2/3rd share out of land measuring 186 bighas 15 biswas, on the basis of jamabandi for the year 1964-65 situated in the revenue estate of Manimajra, Chandigarh being descendants of Mani Ram @ Attar Singh S/o Melu Ram S/o Budh Ram, detailed in head note of the plaint or in the alternative joint possession of their share and relief of permanent injunction was dismissed

by the trial Court vide judgment and decree dated 17.05.2011 that came to be affirmed in appeal by the Additional District Judge, Chandigarh on 11.12.2014.

The sole submission made by counsel for the appellants is that as suit land was Joint Hindu Family Coparcenary Property qua the appellants being the grandsons of Mani Ram @ Attar Singh, Courts have committed a serious error rather illegality by holding that as the appellants have failed to prove that the suit land was owned by their lineal male ascendants upto three degrees, appellants have failed to establish their plea that the suit land was Joint Hindu Family Coparcenary Property in which the appellants got a right by birth being coparceners. It is further argued that in Mulla's Hindu Law, 21st edition, para 221 deals with ancestral property and illustration (a) appended to the said para says that the property inherited by a 'A' from his father would be coparcenary qua the sons of 'A', therefore, the appellants were not obligated in law to prove that the property in question was owned by their great grandfather and was inherited by three male lineal descendants without any obstruction, to establish their plea of suit land being Joint Hindu Family Coparcenary Property.

I have heard counsel for the appellants, perused the paper book particularly the judgments passed by the Courts.

As per plea of the appellants, land in question was purchased by Budh Ram in the year 1899 in the names of sons Dalipa, Sandal, Chhota,

Ghasita and grandson Mani Ram @ Attar Singh in equal share. Mani Ram @ Attar Singh filed a suit for separate possession of 1/5th share which was decreed on 31.05.1920. First appeal and RSA were also dismissed. Mani Ram @ Attar Singh executed a Will in favour of his wife on 22.12.1961. It is averred that land in question is not self acquired property of Mani Ram @ Attar Singh having been received from his grandfather Budh Ram and he had not made any contribution for the same as he was minor at the relevant time and had no money.

On due consideration of averments raised by the appellants, suit land to the extent of share of Mani Ram @ Attar Singh was purchased in his name in the year 1889, may be by his grandfather Budh Ram meaning thereby that Mani Ram @ Attar Singh became owner of the land on the basis of purchase and not on the basis of inheritance to the estate left behind by his father. There is nothing on record suggestive of the fact that father of Mani Ram @ Attar Singh inherited suit property from his father namely Budh Ram in order to accept contention of the appellants that the property inherited by father of Mani Ram @ Attar Singh from his father became coparcenary qua Mani Ram @ Attar Singh. In the given scenario, appellants cannot derive any advantage to their contention from illustration (a) appended to para 221 of Mulla's Hindu Law 21st edition. Under the circumstances, this Court need not to examine the implications of Joint Hindu Family Coparcenary property in view of what has been stated in Para 221 of Mulla's Hindu Law, referred to by counsel for the appellants.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

No order as to costs.

06.04.2018

ashok

(REKHA MITTAL)
JUDGE

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