

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1354 of 2014 (O&M)

Date of Decision: 13.11.2018

Harpal Kaur and others

..... Appellants

Versus

Arshnoor Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. J.S. Brar, Advocate
for the appellants.

Mr. Arun Jain, Sr. Advocate with
Mr. Abhishek Dhull, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM-3238-C-2014

Prayer in the application is for producing the additional evidence.

Application is dismissed as not pressed.

Main Case

Defendants-appellants are in the regular second appeal against the judgments passed by the Courts below.

In the considered opinion of this Court, the question of law which needs determination is:-

“Whether co-parcenary continues to exist after the property has been divided amongst co-parceners?”

Plaintiff-Arshnoor Singh son of Dharam Singh has challenged

the sale deed executed by his father Dharam Singh dated 01.09.1999 in

favour of defendant No.2 on the ground that the property is ancestral co-parcenary property and the sale has been made without legal necessity. It has further been pleaded that no consideration has been received by his father. At this stage, it would be appropriate to notice the pleadings of the plaintiff in para No.2 of the plaint which is extracted as under:-

“That the plaintiff and defendant No.1 are Jat Sikh by caste and are governed by the provisions of Hindu Lal in the matter of succession. The property in the hands of defendant No.1 was ancestral co-parcenary property qua the plaintiff and defendant No.1, which he got in succession. The pedigree table of the family is as under:-

<i>Lal Singh</i>		
<i>I</i>		
<i>Inder Singh</i>		
<i>I</i>	<i>I</i>	<i>I</i>
<i>Gurcharan Singh</i>	<i>Dharam Singh</i>	<i>Swaran Singh</i>
	<i>(defendant No.1)</i>	
	<i>I</i>	
	<i>Arshnoor Singh</i>	
	<i>(Plaintiff)</i>	

That as per the abovesaid pedigree table after the death of Lal Singh Inder Singh remained in possession of the above said property and in acceleration of succession had divided the property in equal shares of his three sons namely Gurcharan Singh, Dharam Singh and Swaran Singh. Subsequently Inder Singh, got 1/4th share from his three sons and thus Inder Singh became the owner of 1/4th share and the remaining three sons became the owner of 3/4th share. Subsequently Inder Singh died on 15.04.1970 and the land of Inder Singh was inherited by his three sons, his widow Achhar Kaur and her daughter Dharam Kaur in five equal shares. Thus the entire land is ancestral co-parcenary property of the plaintiff and his father Dharam Singh.”

Defendant No.1 filed the written statement admitting that the property is ancestral co-parcenary property but it has been alienated by him

being Karta of the family. Defendant No.2 filed a separate written statement pleading that in fact, she was married with defendant No.1 on 29.09.1999 and the suit land was purchased by defendant No.2 even prior to her marriage. It is further pleaded case of defendant No.2 that the plaintiff is son of defendant No.1 from first wife who had expired an unnatural death. It was further pleaded that defendant No.1 has re-married with another lady Smt. Narinder Kaur and she has also been turned out from the house and thereafter defendant No.1 married with her without disclosing the correct facts. It was further pleaded that defendant No.1 has remained President of the Municipal Committee, Ferozepur City.

It will be noted that along with the plaint, the plaintiff produced copy of mutation No.375 which proves that pursuant to a decree passed by the Civil Court in Civil Suit No.182 on 04.11.1964, the property was mutated in favour of Gurcharan Singh, Dharam Singh (defendant No.1) and Swaran Singh. Both the Courts have concurrently held that the property is a co-parcenary property. Both the Courts have overlooked the pleadings of the plaintiff extracted above. Both the Courts have also overlooked the mutation No.395 which was attached with the plaint. No doubt, this document has not been exhibited but since this is in consonance with the pleadings, therefore, in the interest of justice, this document can be looked into. It is apparent that the property of Inder Singh pursuant to the order of the Court dated 04.11.1964 had been divided in equal share in favour of his three sons namely Gurcharan Singh, Dharam Singh (defendant No.1) and Swaran Singh. It is further pleaded case of the plaintiff that subsequently Inder Singh got 1/4th share from his three sons and thus, Inder Singh became owner of 1/4th share whereas the remaining 3/4th separately

and individually remained in the name of all the three sons. It is further pleaded that on death of Inder Singh on 15.04.1970, property of Inder Singh was inherited by his three sons, widow Achar Kaur and her daughter Dharam Kaur.

It will be significant to note here that the plaintiffs have not produced the revenue record between Jamabandi for the year 1957-58 till Jamabandi for the year 1970-71. Thus at least three Jamabandies have not been produced. Still further, Ex.P-11 i.e. Jamabandi for the year 1970-71 is only with respect to 83 kanals and 2 marlas of land and all subsequent Jamabandies which have been produced are with respect to the land which was left with Dharam Singh i.e. his 1/4th share which he got pursuant to the Court decree and on re-transfer of 1/4th of the total land as transferred by his three sons.

Learned counsel for the appellant has submitted that no evidence has been produced to prove that the land was ever owned by Lal Singh. Still further, old khasra numbers and new khasra numbers after the consolidation of holding have not been connected as the relevant record of the consolidation of holdings has not been produced. He further submitted that once there was disruption in the family and the property was divided co-parcenary, if any, even if existed, ceased to exist.

On the other hand, learned senior counsel for the appellant has submitted that the property has been divided to accelerate succession as the property had devolved upon three sons of Inder Singh in terms of Section 6 of the Hindu Succession Act and therefore, nature of the property would not change. He has further submitted that it is the stand of the respondent herself that the property has not been partitioned. He has further relied

upon a judgment passed by the Hon'ble Supreme Court in the case of Valliammai Achi Vs. Nagappa Chettiar and another, AIR 1967 (SC) 1153.

He has further submitted that the sale deed was impounded as it was not properly stamped and Harpal Kaur had admitted that no consideration has been paid. Learned counsel further submitted that Harpal Kaur has also in a statement Ex.P-6 in the previous proceedings has admitted that the property is ancestral in nature.

This Court has analyzed the arguments of learned counsel for the parties. Let us first deal with the argument of learned counsel for the respondents.

Once it is the pleaded case of the plaintiff that Inder Singh had divided the property in favour of his three sons, the co-parcenary, if any, ceased to exist. Learned counsel for the respondents is not correct in submitting that the property had devolved upon under Section 6 of the Hindu Succession Act. Had the property devolved upon under Section 6, father being co-parcener was entitled to a share in the property. It is fundamental that if a co-parcenary property is divided, the co-parcenary ceases to exist. Even if subsequent event is noticed that 1/4th share of the property was transferred to Inder Singh, still individual ownership of each son as well as also Inder Singh is not in dispute. Still further, on the death of Inder Singh, the property was succeeded by class-I heirs including widow and daughter under Section 8 of the Hindu Succession Act.

As regards argument of learned counsel that defendant No.2 has taken a stand that there was no partition or the property is ancestral, in view of the pleadings and the overwhelming evidence available on the file, the statement of defendant No.2 cannot be relied upon to hold otherwise.

Defendant No.2 in the present case has taken a positive stand that the property is neither ancestral nor co-parcenary qua the plaintiff.

As regards next argument of learned counsel that no consideration is proved to have been paid. It will be noticed that firstly in the sale deed, the payment of the consideration is admitted. In any case, the plaintiff has no right to challenge the sale deed on the ground that the consideration has not been paid. Defendant No.1 being executant could only file a suit on that basis.

Still further, on careful examination of the sale deed, it is apparent that the title passed on execution of the sale deed. As per Section 55 of the Transfer of Property Act, if ownership of the property has passed to the buyer before payment of whole of the purchase money, the purchase money shall remain charge upon the property in the hands of buyers. Reference in this regard can be made to Section 55(4) of the Transfer of Property Act which is extracted as under:-

“55. Rights and liabilities of buyer and seller.- In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold.

(4) The seller is entitled-

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer [any transferee without consideration or any transferee with notice of the non-payment], for the amount of the purchase-money, or any part

thereof remaining unpaid, and for interest on such amount or part [from the date on which possession has been delivered].”

In view of the aforesaid position, it is apparent that neither the plaintiff has any locus standi to challenge the sale deed on the ground of non-payment of the consideration nor the registered sale deed can be set aside on this ground.

Argument of learned senior counsel based upon the judgment of the Hon'ble Supreme Court in Valliammai Achi's case (supra) is also without any substance because in the case before the Supreme Court father had examined a Will in favour of his only son which is not the case herein.

As noticed earlier, once it is pleaded case of the plaintiff that there was disruption in the family and the property came to be transferred in the individual names of the members, the co-parcenary, if any existed, ceased to exist.

In view of the discussion made above, question of law is answered in favour of the appellants.

Hence, the judgments passed by the Courts below are set aside.

Regular second appeal is allowed.

13.11.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No