

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No.4102 of 2015

Date of decision: August 10, 2018

Sudesh Kumari

...Appellant

Versus

Sultan Singh (deceased) through
his LRs & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Arun Kumar Jain, Advocate for the appellant.

Rajan Gupta, J.

Present appeal has been preferred to impugn findings of two courts below on the ground that same are perverse and based on misappreciation of evidence.

Brief factual matrix of the case is that plaintiff/appellant Sudesh Kumari filed a suit for declaration against the defendant/respondents, alleging that parties to the suit i.e. plaintiff and defendants No.2, 3, 5 & 6 are co-sharers in joint possession of the land measuring 83 Kanals 17 Marlas in Khewat No.121, Khata No.146 and land measuring 03 Kanals 11 Marlas i.e. 71/225th share of 11 Kanals 05 Marlas in Khewat No.126, Khata Nos.151 and 152, situated at Pillukhera, District Jind, as per their shares mentioned in the plaint. Out of the aforesaid land, plaintiff has 3/20th share i.e. 13 Kanals 02 Marlas and she had right to get the same mutated in her name after its partition and the entries made in the revenue records including registered release deed No.1533 dated

16.12.2004, executed by defendant No.1 in favour of defendants No.2, 3 & 8 alongwith consequent mutation, are wrong, null and void, which need to be corrected. Plaintiff pleaded that the parties including deceased Hawa Singh and Azad Singh are Hindus and are governed by Banaras School of Hindu Mitakshara Law. A joint Hindu Family was constituted by Bhartha, who was Karta of the same. The suit land was ancestral land in his hands, which was inherited after the death of his father Jaila. Earlier, Jaila had inherited the same from his father Sahib Dayal after his death. Father of plaintiff namely, Hawa Singh son of Bhartha, was also coparcener in the Joint Hindu Family and thus, plaintiff was also entitled to a share on partition. Hawa Singh died intestate in 1984 much after enforcement of Hindu Succession Act, 1956, leaving behind his daughter i.e. the plaintiff and a son Azad Singh, who died in 1994. $\frac{1}{5}$ th share of Hawa Singh was inherited by plaintiff and her brother Azad Singh. Wife of Hawa Singh had already died. In this way, plaintiff became joint owner in possession to the extent of $\frac{1}{10}$ th share, which comes to 8 Kanals 15 Marlas and plaintiff was entitled to get the same mutated in her name. Defendant No.1 Bhartha and defendant No.4 Gyano Devi had died during pendency of the suit. Their $\frac{2}{5}$ th share has been inherited by plaintiff and defendants No.2, 3, 5, 6 & 7. In this way, share of plaintiff came to be $\frac{3}{20}$ equivalent to 13 Kanals 02 Marlas. Defendants were trying to alienate this land falling to the share of plaintiff and it was prayed that they be restrained from interfering into her joint ownership and possession of the suit land.

Suit was contested by the defendants. Defendant No.1 in his written statement denied the alleged joint Hindu family. Since the suit land was self-acquired by him, the alleged coparceners had no right or share therein. The plaintiff has no right or concern with the same. Defendants No.2, 3, 5 to 8, in their joint written statement pleaded that the suit land was self-acquired property of defendant No.1, who by way of release deed No.1533 dated 16.12.2004, had transferred the suit land in favour of Sultan Singh, Om Parkash sons of Bhartha and Wazir Singh son of Om Parkash. It was pleaded that parties are not Hindus and not governed by Mitakshra School of Hindu Law and Bhartha never remained Karta of the alleged joint Hindu family. Other averments made in the plaint were also denied. After hearing both the parties and perusing oral as well as documentary evidence, the trial court dismissed the suit. It observed that from the various Jamabandis, mutations and other documents, ancestral nature of land is not proved on record and possession of plaintiff over the land in question has also not been proved. Findings were affirmed by the lower appellate court.

I find no infirmity with the findings arrived at by both the courts below. It is settled law that death within the three limits of lineal descendants of common ancestor, does not introduce other surviving members as coparceners. Thus, it is essential that all the members, which were shown as in existence, must be shown in existence at the time when succession opens. Plaintiff/appellant has failed to prove that the suit property in the hands of Bhartha was ancestral property. On the other hand, Bhartha, after death of his father Jaila, became sole surviving

coparcener and he had every right to bequeath the suit land being his self-acquired property. Possession of plaintiff over the land in question has also not been proved, as during her cross-examination while appearing as PW-1, she stated that the suit land was being cultivated by Om Parkash. The plea raised by the appellant before this court that judgments of two courts below are based on misappreciation of evidence, is untenable. I find no substance in this plea. A perusal of concurrent findings of two courts below reveals that same suffer from no infirmity. No other substantial question of law has been urged. The appeal is without any merit and is hereby dismissed.

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Since the main appeal has been dismissed on merits, this application for condonation of delay does not survive and the same is also dismissed.

(RAJAN GUPTA)
JUDGE

August 10, 2018
'Rajpal'

Whether speaking / reasoned	Yes / No
Whether Reportable:	Yes / No