

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

**RSA No.6836 of 2016
Date of Decision: 16.02.2018**

Paramjit Kaur & Others

.....Appellants

Vs.

Charanjit Singh and anr.

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Inderjit Sharma, Advocate, for the appellant.

Mr.Ranjit Saini, Advocate, for the respondent.

RITU BAHRI, J. (ORAL)

The appellants-Paramjit Kaur and others have come up in regular second appeal against the judgments of the trial Court dated 01.03.2013 and learned appellate Court, Hoshiarpur, dated 02.11.1016 whereby suit for declaration to the effect that plaintiffs No.2 and 3 and defendant No.1 are the owners in joint possession of the land measuring 28 Kanals 7 marlas has been dismissed being Hindu joint family/coparcenary property and sale deed dated 06.10.2006 executed by the defendant No.2 in favour of defendant No.2 is without legal necessity and without the consent of the plaintiffs No.2 and 3 coparcener.

The brief facts of the case are that the plaintiff No.1 i.e. Paramjit Kaur is wife and plaintiffs No.2 and 3 are the daughters of defendant No.2. Pala Singh was owner of the suit land alongwith some other land and after the death of Pal Singh the suit land along with other land was inherited by Jagat Singh his sole son. Jagat Singh died about 3 years back and after his death his estate was inherited by the above said sons including defendant No.1 in equal shares and the suit land fell into the share of defendant No.1 through partition which took place among the sons of Jagat Singh and their shares were separated vide mutation No.3765. In this way defendant No.1 inherited the suit land from his fore fathers and same is joint Hindu

Family/Coparcenary property and the plaintiffs have interest in the same by their birth in the family. The respondent/defendant No.1 cannot alienate/sell the same without any legal necessity or without any benefit of estate etc. Smt.Harjit Kaur who in the maternal grandmother (Nani) of appellants No.2 and 3 has filed the suit for the benefits of the minors. It is further alleged that appellant/plaintiffs and respondent/defendant No.1 were residing in USA and some dispute took place between the appellant No.1 and respondent/defendant No.1 and their relations became strained and on account of this the respondent/defendant No.1 came to India in the month of August 2016 and then he executed his sale deed dated 06.10.2016.

On notice, defendants filed reply and on merits took the plead that Jagat Singh father of defendant No.1 executed the legal and valid Will of his properties and all the legatees of the Will including defendant No.1 inherited his properties including the suit land. So the suit land became the self acquired property of defendant No.1 and he sold the property as he owed a large amount towards his friends and relatives from whom he borrowed for his medical treatment and he was in pressing necessity for the amount to return the same to his creditors. Thereafter, on the pleadings of the parties, the issues were framed by the trial Court.

Both the Courts below have given their concurrent findings on issue No.1 and 2 that jamabandi for the year 1929-30 and Ex.P3/A do not tally with the suit property. The plaintiff/appellant has not let any evidence to show that property in dispute actually Joint Hindu Coparcener property. Further, it is further admitted that the partition took place amongst sons of late Jagat Singh and their shares were separated vide mutation No.3765 and partition had already taken place shares acquired by each of the sons of Jagat Singh became his self acquired property. A reference was made to the judgment in the case of Mohinder Kaur Vs. Pargat Singh 2010(3) RCR(Civil) 491 wherein, it has been stated that father during his life time had partitioned the coparcenary Hindu joint family property, and the share falling to each of his son was transferred by way of consent decree. The acquisition is, therefore, not by way of inheritance. The property in the hands of defendant N.1, became self acquired of Ujjagar Singh and lost the character of joint Hindu Coparcenary property. The plaintiff/respondent

could not, therefore, challenge the alienation by way of consent decree, in favour of appellant. Since, it is admitted by the plaintiff that property was inherited by the sons of Jagat Singh after his death including defendant No.1 in equal shares and partition took place amongst sons of late Jagat Singh and their shares were separated vide mutation No.3765.

So in view of the above, the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

16.02.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No