

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.4540 of 2014 (O&M)

Date of decision:23.01.2018

Devinder Kaur

... Appellant

Vs.

Parambir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. B.R.Mahajan, Senior Advocate with
Mr. Saurabh Mago, Advocate
for the appellant.

Mr. Manish Prabhakar, Advocate
for respondents No.1 and 2.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the impugned judgments and decrees of the Courts below, whereby the suit filed by the appellant-plaintiff seeking following relief has been rejected:-

“Suit for declaration to the effect that the plaintiff has got ½ share in the land measuring 65 kls 14 marlas bearing khasra nos.57/16, 17, 18/2/2, 23/1, 24/1, 24/2, 25, 67//3/1, 69//23/2, 24, 25/1, 72//3/2, 4, 5/1, khata khatauni no.328/658 as entered in the jamabandi for the year the judgments and decrees dated 25.07.89 and 25.4.96 are illegal, null and void and are not binding upon the rights of the plaintiff/with a consequential relief of joint possession of the abovesaid land.

Plaint presented on 17.4.96/30.4.05.”

Before I could advert to the arguments of learned counsel for the appellant-plaintiff, it would be in the fitness of things to give short preface of the matter for adjudication of the dispute.

The appellant-plaintiff instituted a suit stating therein that the suit land was originally owed by Sohan Singh, who unfortunately died on 09.10.1989. He was survived by following legal heirs:-

Ravail Kaur	-	Widow
Sukhbir Singh	-	son,
Balbir Singh	-	son, and
Devinder Kaur	-	daughter

Ravail Kaur died on 14.04.1991. Balbir Singh died issueless and unmarried on 25.04.1991. Sukhbir Singh also died on 18.03.1994 and the defendants were impleaded as legal heirs. It is in this background of the matter, the plaintiff claimed $\frac{1}{2}$ share in the suit property.

The defendants in pursuance to the notice received, had set up acknowledgment of the plaintiff, whereby, she had acknowledged the relinquishment of her share in favour of the defendants and also claimed the benefit of decree dated 25.07.1989 resulting into filing of suit by Balbir Singh and Ravail Kaur against Sohan Singh and Subkhbir Singh. Another ex parte decree dated 25.4.1995 was also set up. It was emphatically denied that the suit property was co-parcenary and therefore, the married daughter would not have a right in the property. The decrees aforementioned were

stated to be legal and valid in the eyes of law. The trial Court on the basis of the preponderance of evidence dismissed the suit but the appellant-plaintiff preferred an appeal under Section 96 of the Code of Civil Procedure and the Lower Appellate Court dismissed the same.

Mr. B.R.Mahajan, learned Senior Counsel assisted by Mr. Saurabh Mago, Advocate appearing on behalf of the appellant-plaintiff submitted that the Lower Appellate Court being the last Court of fact and law enjoined upon an obligation to formulate the points of determination as per the provisions of Order 41 Rule 31 CPC, much less advert to the oral and documentary evidence. In this regard, he has drawn the attention of this Court to paragraph 11 of the Lower Appellate Court which reads as under:-

“11 I have considered the arguments raised by both the counsel for the parties and have also carefully gone through the record of this case. From the perusal of the record as well as the arguments advanced by the learned counsel for the parties, I find that the learned Lower Appellate Court has passed a perfect and valid judgment by dismissing the suit of the appellant-plaintiff. When the suit was filed by the appellant-plaintiff the property in question had already become exclusive ownership and in possession of the respondent being successor of Sukhbir Singh as Class-I heir and appellant had no interest in the property which was left by Sukhbir Sigh as Sukhbir Singh had inherited the share of

Balbir Singh being co-parcener as he had left no class-I heir and appellant had no interest in the property left by Sukhbir Singh, as per the evidence brought on record by the respondent. Sukhbir Singh and Balbir Singh, both had inherited the co-parcenary share of Sohan Singh after his death o 09.10.1989 on the basis of survivorship and this has already recognized by Court. Moreover, at the time of death of Sohan Singh, deceased on 09.10.1989, rule of survivorship was operative only and that Sohan Singh, being owner of co-parcenary property survived by his two sons being the co-parcener in property and on demise of Balbir Singh his half share was also acquired by Sukhbir Singh by survivorship and widow Sarabjit Kaur as half share as maintenance right and in such like eventuality, appellant-plaintiff had nothing in the share left by Sohan Singh. The counsel for the appellant has also failed to produce any substantial question of law, whereas, on the other hand, the respondent has produced reliable evidence. Accordingly, I hold that the appellant-plaintiff has failed to establish his case. Accordingly, it is held that the learned Lower Court has rightly gave its findings on issues no.1 to 4, 5-A & 5-B and the findings given by the learned Lower Court stands upheld and affirmed on all the issues.”

He further submitted that the trial Court abdicated in not referring to the documents and provisions of law particularly the provisions of Section 6 of Hindu Succession Act, 1956 which deals in devolution of interest in coparcenary property, as by virtue of two decrees, the share of Sohan Singh had fallen to two sons and widow, who died intestate. Even the defendants miserably failed to prove the acknowledgment dated 02.04.1991.

Per contra, Mr. Manish Praphakar, learned counsel appearing on behalf of respondents No.1 and 2 submitted that there is no illegality and perversity in the findings rendered by both the Courts below as the appellant-plaintiff has to stand on her own legs, much less, failed to prove the averments made in the plaint and thus, urged this Court for dismissal of the Regular Second Appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is force and merit in the submissions of Mr. Mahajan. The following points are not in dispute:-

Death of Sohan Singh, Ravail Kaur and Balbir Singh, much less the execution of the decree are not in dispute, yet the same have been challenged by the appellant-plaintiff but fact of the matter is that the defendants have not set up any Will alleged to have been executed by Balbir Singh and Ravail Kaur, prima facie, in my view, the appellant being Class I heir would have a right to succeed in his share. Though the other son, Sukhbir Singh was married and defendants are his legal heirs.

Be that as it may, I am of the view that the Lower Appellate Court abdicated in not following the statutory provisions as indicated above by referring to the oral and documentary evidence. For the sake of brevity, the provisions of Section 6 of Hindu Succession Act, read as under:-

“6 Devolution of interest in coparcenary property:- (1) Where a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.”

In my view, it is a fit case, where the appeal is required to be re-visited by the Lower Appellate Court. Resultantly, the judgment and decree of the Lower Appellate Court is hereby set aside and the matter is remitted back to the Lower Appellate Court to decide the appeal afresh in accordance with law after affording the opportunity of hearing to the parties.

Accordingly, the appeal stands allowed.

The parties through their counsel are directed to appear before the Lower Appellate Court on 27.02.2018.

(AMIT RAWAL)
JUDGE

January 23, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No