

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

RSA No. 1671 of 2018 (O&M)

Date of Decision: 30.05.2018

Arjan Singh

---Appellant

Versus

Kulwant Singh and ors.

---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Dilpreet Singh Gandhi, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

The plaintiff has filed this regular second appeal against the judgments of the Courts below whereby the suit filed by him has been dismissed.

The plaintiff filed a suit seeking relief of declaration, joint possession and permanent injunction in respect of his share in the suit land which was claimed to be the ancestral coparcenary joint family property of the plaintiff and the defendants. It was his case that the suit land was the Joint Hindu Family coparcenary property of the plaintiff and the defendants and that he had a share by birth in the property which was inherited by his father-Dara Singh from his forefathers. Dara Singh had wrongly and illegally executed a transfer deed dated 4.9.2009 in favour of defendant Nos. 1 to 3 without any consideration, legal necessity or for benefit of the family but just to defeat the rights of the plaintiff.

Dara Singh, father of the plaintiff was impleaded as defendant No.4 in the suit. Defendant Nos. 1 and 2 were the sons of Dara Singh.

Defendant No. 3 was the son of Karaj Singh son of Dara Singh. Defendants

No. 5,6 and 7 were the daughters of Dara Singh.

Defendants No.1,3 and 4 filed written statement contending that Dara Singh was the sole owner of the property and he had validly executed the transfer deed dated 4.9.2009 in favour of defendants No.1 to 3. Mutation had been sanctioned in their favour and they were owners in possession thereof.

Defendants No.2, 5, 6 and 7 did not appear despite service and were proceeded against ex-parte.

The Learned Trial Court held that the plaintiff had not been able to prove that the suit land was ancestral coparcenary Joint Hindu family property. In order to prove that the suit land was ancestral coparcenary property the plaintiff had proved the Jamabandi for the year 2007-2008 Ex P/11, Jamabandi for the year 2012-13 Ex P-12, Farad Excerpts Ex.P1, Mutation No. 617 Ex P2, Jamabandi for the year 1904-05 Ex. P3, Sajra Nisab for the year 1939-4 Ex P-4, Missal Hakiat for the year 1937-38 Ex P-5, Khatoni Istemal Arji Ex P-7, Khatoni Paimaish Ex P-8, Naksha Haqdwar Ex P-9, Missal Hakiat of the year 1961-62 Ex P-10. PW 3 Amritpal Singh Translator had deposed that the above documents proved that the suit land measuring 135 Kanals 17 marlas was owned by Kala Singh and after him was inherited by Surain Singh and Mulla Singh vide mutation No. 617 and thereafter by Dara Singh, Kartar Singh etc. The Trial Court however held that to prove the pre-consolidation and post consolidation khasra Nos. of the suit land, the plaintiff had not produced the Register Karvai, which is prepared after Naksha Haqdawar in which the re-allotted numbers are mentioned as also the area and value of the land in lieu of which the new

plaintiff, it could not be held that the plaintiff had proved and connected the pre-consolidation numbers given in Khatoni Istamal Arji Ex.P7, Khatoni Paimash Ex.P8 and Naksha Haqdwar Ex.P9 with the suit land in the head note of the plaint. It having been concluded that the plaintiff had failed to prove that the suit land was ancestral coparcenary Joint Hindu family property, it was held that no relief of declaration, joint possession and permanent injunction could be granted. Further it was held that even if it was presumed that the suit land was ancestral coparcenary joint Hindu Family property, then also no relief of declaration to get the suit land by partition, joint possession and permanent injunction could be granted during the life time of his father. It was held that if the property is sold by the Karta the only recourse is to challenge the alienation on the ground that it was an act of bad management. The Learned Trial Court also held that the suit was barred by limitation. Accordingly, the suit was dismissed.

The plaintiff challenged the findings of Learned Trial Court in appeal. During the pendency of the appeal, an application under Order 41 Rule 27 for leading additional evidence was filed. The said application was allowed on 11.12.2015. In pursuance thereto, the plaintiff tendered certified copy of Register Karvai Istamal as Ex.P12 and its Punjabi translation as Ex.P13 .

The learned lower Appellate Court held that the Trial Court had wrongly held that the suit to be barred by limitation merely based on its findings on the other issues No.1 to 5. It was held that a suit for declaration instituted on 15.6.2011 to challenge the transfer deed dated 4.9.2009 could not be said to be barred by limitation. Hence, the findings of learned trial

Court on this issue were reversed.

Dara Singh- father of the plaintiff who had been arrayed as defendant no.4, died on 30.12.2012. The learned Lower Appellate Court noticed that neither during the pendency of the suit, which was decided on 6.1.2015 nor at the time of filing of the appeal on 30.1.2015, the plaintiff filed any application to implead his legal heirs, who in any case were on record. He also did not bring the factum of the death of his father-Dara Singh before Trial Court or before the Appellate Court. For the first time on 18.4.2016 an application u/o 22 Rule 4 CPC for impleading the legal heirs of Dara Singh was filed. Considering that suit for joint possession and partition filed by the plaintiff during the life time of his father was not maintainable and the only remedy available to the plaintiff-appellant, was to challenge the alienation on the ground that it was an act of bad management the Ld. Lower Appellate Court held that notwithstanding the subsequent death of Dara Singh, the findings of Trial Court on issue Nos.1 to 5 had to be sustained. Resultantly, the appeal was dismissed.

Learned counsel for the appellant has not been able to show as to how the findings of both the Courts on the question of maintainability of the suit for the reliefs prayed for during the life time of his father are incorrect or against the law. In fact the said findings are based on a long line of precedents including **Yugraj Singh Minor through his mother & another Vs. Harbans Singh and or 2010(2) Civil Court Cases 74 , Raghbir Singh Vs. Dalip Singh & another 2004(2) Civil Court Cases 649.**

There is no merit in this appeal and the same is dismissed.

May 30, 2018

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(**HARINDER SINGH SIDHU**)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No