

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5959 of 2014(O&M)
Date of Decision-05.07.2018

Annu ... Appellant
Versus
Balwan Singh and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. P.R. Yadav, Advocate
for the appellant.

Mr. Rajesh Kumar, Advocate for
Mr. K.S. Yadav, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. The present regular second appeal has been preferred by the appellant against the concurrent judgments and decrees passed by the Courts below, dismissing the suit filed by the plaintiff for permanent injunction to enforce right in the joint family property and possession.

[2]. A civil suit for permanent injunction was filed by plaintiff Annu daughter of late Sh. Krishan Kumar son of Ram Singh @ Hawa Singh, minor through guardian mother Smt. Bimla Devi daughter of Jodha Ram, resident of village Rajokri, New Delhi against Balwan Singh son of Ram Singh @ Hawa Singh son of Jhagra son of Cheta, resident of village Masit, Tehsil and District Rewari. Ram Singh @ Hawa Singh was impleaded as proforma defendant.

[3]. Plaintiff claimed that the parties are Hindu by religion. Plaintiff and defendants constituted a joint Hindu family. As per Hindu Mitakshra School, the child is entitled to share in parental coparcenary property. She claimed herself to be coparcener in joint Hindu family property as mentioned in the plaint and her share came out to be $\frac{1}{4}^{\text{th}}$ according to survivorship from the birth. Plaintiff took birth on 01.09.1993 from the loins of Krishan Kumar and Bimla Devi in village Masit. Father of the plaintiff namely Krishan Kumar died in November 1994. Plaintiff lives in her maternal house with her maternal grand-mother Lal Kaur in village Rajokri, New Delhi. Defendant No.2 Ram Singh @ Hawa Singh is grand-father of the plaintiff and is *karta*/manager of joint Hindu family property. Defendant No.1 in connivance with defendant No.2 in order to grab the share of the plaintiff, got release deed dated 26.02.2002 executed from defendant No.2 and mutation No.670 dated 16.05.2002 was also got sanctioned in connivance with officials of the revenue department. Release deed and mutation got executed by defendant No.1 were in respect of ancestral joint Hindu family property, in which plaintiff has a right and share by birth, therefore, the release deed was claimed to be illegal and not binding upon the right of the plaintiff. Defendant No.1 illegally took possession of the $\frac{1}{4}^{\text{th}}$ share of the plaintiff and thereafter intended to alienate the same by giving threats to the plaintiff. Some part of the land had already been sold by defendant No.1 on 25.09.2006 in an illegal manner.

[4]. The suit was contested by defendant No.1. The plea of the plaintiff being member of joint Hindu family was denied. 1/4h share of the plaintiff by way of survivorship was also denied. Birth of the plaintiff on 01.09.1993 in the family of defendant No.2 was also denied. It was claimed that Krishan Kumar died unmarried and issueless. Defendant No.2 adopted the written statement filed by defendant No.1.

[5]. Following issues were framed by the trial Court vide order dated 10.01.2008:-

“1. Whether the suit property detailed in para No.2 of the plaint is joint Hindu family property? OPP

2. Whether the plaintiff is a co-parcenar to the extent of 1/4th share of the suit property? OPP

3. Whether the release deed No.5717 executed in favour of defendant No.1 by defendant No.2 on 26.02.2002 and mutation No.670 dated 16.05.2002 is illegal, null and void? OPP

4. Whether the plaintiff is entitled for decree of injunction as prayed for? OPP

5. Whether the plaintiff has no locus standi to file the present suit? OPD

6. Whether the suit is not maintainable? OPD

7. Whether the suit is liable to be rejected under Order 7 Rule 11 of CPC? OPD

8. Whether the suit is bad for non-joinder of necessary parties? OPD

9. *Whether the suit is res judicata? OPD*

10. *Relief.”*

[6]. Both the parties went to trial. Plaintiff got examined Babu Lal, S.A, Health Department as PW 1 who brought the summoned record, according to which on page No.64 at serial No.14 of village Masit, name of Annu daughter of Krishan Kumar was recorded. According to the record, date of birth of the plaintiff is 01.09.1993 and name of mother is Bimla Devi. According to summoned record, birth certificate is Ex.PW1/A, which was objected to for want of proof. In cross examination, the witness admitted that the proof regarding birth certificate was not summoned. It is correct that record was not prepared by him and he gave the statement as per record. The register was as per record maintained by CMO Office. The witness pleaded that he does not know about the author of the entry. Kailash, Sub Registrar appeared as PW 2 and brought mutation No.5338 dated 25.09.2006 Ex.PW 2/A. In his cross examination, he stated that the sale deed was not prepared and registered in his presence. Bimla Devi was examined as PW 3 and tendered her affidavit Ex.PW 3/A in her examination-in-chief, in which she has stated that Krishan Kumar was son of defendant No.2 and plaintiff took birth from her wedlock with Krishan Kumar in village Masit. Krishan Kumar died in November 1994. Thereafter, the plaintiff started living with her maternal grand-mother Lal Kaur in Rajokri, New Delhi. Grand-father of the plaintiff namely Ram

Singh @ Hawa Singh is under the influence of defendant No.1 and defendant No.1 in order to usurp the share of the plaintiff got effected wrong entry in the revenue record. Release deed dated 26.02.2002 was got executed by defendant No.1 from defendant No.2 and mutation was got sanctioned on 16.05.2002 from the revenue department in an illegal manner. Cross examination of Bimla Devi revealed that her marriage with Krishan Kumar was solemnized on 05.05.1991 in village Masit. She remained in village Masit for 4-5 years. Last time she remained in village Masit after the death of her husband. Her husband died on account of consuming poison. At that time, she was in her in-laws house. She did not know about the land. Ram Singh @ Hawa Singh was having one brother. He had three daughters namely Santa, Meena and Phool. After 1994, she visited village Masit on two occasions. Thereafter, she did not visit the village. Her voter list and ration card were prepared in village Masit. She came to know about transfer of land from brother of Ram Singh @ Hawa Singh namely Suraj Bhan about 6 months thereafter. Balwan Singh has three sisters namely Santa, Meena and Phool. She never visited in Chuda ceremony of sister of Balwan Singh, nor paid any amount in ceremony. She performed second marriage after three years with Krishan in village Tijara. Now she is living in village Tijara. She has four children from Krishan i.e. one son and three daughters. No other case of plaintiff Annu is pending except the present one. The suggestion was put to the witness that Annu

was not born from the wedlock of Bimla Devi and Krishan. The suggestion was denied by the witness. Ramesh Soni, Sarpanch was examined as PW 4. In his examination-in-chief, the witness stated that Annu took birth on 01.09.1993 from the wedlock of Bimla and Krishan Kumar. Krishan Kumar died in November 1994. After the death of Krishan Kumar, Annu started living with her maternal grand-mother Lal Kaur in Rajokri, New Delhi. Share of Krishan Kumar was to the extent of two and half acres of land, which is coming in the name of Ram Singh grand-father of Annu in the revenue record. The land is ancestral and the plaintiff has a birth right in it. The witness was cross examined, wherein, he had admitted that he was never summoned in the case. She has attended Barat of Krishan Kumar when Bimla was married. He saw Bimla in village upto 1994. Ram Singh was being looked after by Bimla. Krishan Kumar died in the year 1994. He was 27-28 years of age at the time of his death. Plaintiff Annu was 6-7 years of age when the witness saw her at that time.

[7]. Manghtu Ram, Chowkidar was examined as PW 5, wherein he stated that he is Chowkidar of village Masit and used to enter birth of every child in the record register. He brought the register, according to which at page No.66, name of Annu daughter of Krishan Kumar was recorded. Death of birth is shown as 01.09.1993. Name of mother is Bimla Devi and entry of father is Krishan Kumar. The entry is correct according to the register.

The witness was cross-examined, wherein he stated that register

of birth and death is to be collected from the police station. There is no seal of police station on the register. The witness admitted that in the register at page No.19, signature of Munshi of the Police Station is present. He does not know about the name of Munshi, nor he could tell the date on which the signatures were made. Name of Annu was got registered from him by Ram Singh. Signature of informant was not obtained. In the village, there are 4-5 persons in the name of Krishan Kumar. He is not a summoned witness, nor he received any Court summon. Karan Singh, Nambardar of village Masit was examined as PW 6. He also stated that Bimla Devi daughter of Jodha Ram was married to Krishan Kumar son of Ram Singh. Plaintiff Annu took birth on 01.09.1993 from the loin of Bimla Devi and Krishan Kumar. Share of Krishan Kumar in the land was two and half acres and the same is recorded in the name of grand-father of Annu i.e. Ram Singh @ Hawa Singh in the revenue record. Release deed and consequent mutation were executed by defendant No.1 in order to usurp the share of the plaintiff. The witness was cross examined, wherein he admitted that he became Nambardar of the village in the year 1992. He did not go in the Barat of Krishan Kumar with Bimla. Barat went to Rajokri, New Delhi. He did not know the date of marriage, but stated that it was in the year 1990. The witness pleaded in respect of composition of the plaintiff's family. Prabhu Dayal, Advocate was examined as PW 7 who had prepared the release deed at the

instance of Ram Singh @ Hawa Singh. The witness pleaded ignorance as to the property of the parties, nor he had seen the original release deed. Dharam Singh was examined as PW 8. He also deposed on the same lines as that of other witnesses in respect of marriage of Bimla Devi with Krishan Kumar and birth of the plaintiff from that wedlock. Mukesh Kumar was examined as PW 9 to the same effect. Chander Bhan, Sadar Kanungo appeared as PW 10 and stated that the land came to be mutated in the name of Ram Singh @ Hawa Singh vide mutation No.141 in respect of inheritance of Cheta.

[8]. Balwant Singh was examined as DW 1. The land in question was claimed to be self acquired property of Ram Singh @ Hawa Singh. Babu Lal son of Brij Lal was examined as DW 2. He denied the factum of Krishan Kumar being son of Ram Singh @ Hawa Singh. Rameshwar son of Chandgi Ram was examined as DW 3. The witness pleaded ignorance about nature of property being ancestral. He admitted that Manghtu Ram is Chowkidar of the village. Manghtu Ram, Chowkidar used to maintain the register of birth and death. The witness admitted that there was a joint family of Kirshan, Balwan and Ram Singh during life time of Krishan. Birth of the plaintiff from the loins of Bimla Devi and Krishan Kumar was denied. Balram was examined as DW 4. He stated that Ram Singh had two sons namely Balwan and Krishan. The land is ancestral which is coming from the time of their forefathers. Manghtu Ram

is Chowkidar of the village who used to prepare entry in the Chowkidar register. Krishan was never married to Bimla. Krishan was unmarried and the plaintiff never took birth from the loins of Krishan Kumar and Bimla. Balwan Singh was examined as DW 5, wherein he stated in tune with the stand taken in the written statement. Relationship of the plaintiff was denied.

[9]. Trial Court dismissed the suit on the ground that the property is proved to be ancestral property. Krishan Kumar was unmarried and issueless and died about 15 years back. Only photocopy of original birth certificate Ex.PW1/A was produced on record and the original of the same was not produced. Photocopy of page 66 of birth and death register of village Masit came to be exhibited as PW5/B, but the same was not certified from the original. In the statement of PW 3 Bimla, she stated that name of her earlier husband was Satbir who died due to poisoning. Thereafter, she re-married with Krishan of village Tijara and gave birth to four children. She further admitted that her name was recorded in the voter list and ration card of village Masit, but the same was not produced by the plaintiff, therefore, the trial Court took adverse inference under Section 114 of the Indian Evidence Act. The suit was accordingly dismissed.

[10]. Plaintiff filed appeal before the Lower Appellate Court. Lower Appellate Court vide judgment and decree dated 31.03.2014 dismissed the appeal on the premise that even if it is

assumed that plaintiff was born out of wedlock of Krishan Kumar and Bimla Devi, even then, she has no right in the suit property and she cannot challenge the release deed dated 26.02.2002 and subsequent mutation No.670 of 16.05.2002. Lower Appellate Court referred to Amendment Act 2005 in Hindu Succession Act, whereby daughter was given right by birth in the coparcenary property by virtue of aforesaid amendment. As per the said Act, nothing contained in sub section of Section 6 shall affect or invalid any disposition or alienation including any partition or testamentary disposition of property which has taken place before 20.12.2004. Release deed was dated 26.02.2002 and therefore, it was held that the plaintiff has no right to challenge the release deed No.5717 dated 26.02.2002 and consequent mutation.

[11]. Perusal of the judgment and decree dated 31.03.2014 passed by the Lower Appellate Court would show that consideration was made only on the amendment Act 2005 by admitting that even if the plaintiff is considered to be daughter of Krishan Kumar and Bimla Devi, she would not be competent to challenge the release deed, which was executed on 26.02.2002 prior to the target date i.e. 20.12.2004.

[12]. I have considered the controversy. In **Harjit Grewal and others Vs. Dr. Vinod Kumar Batra and others, 2010(2) PLR 235**, the Hon'ble Apex Court has held that the Lower

Appellate Court has to give findings under all the issues as in the first appeal all factual matrix of the case has to be re-appreciated.

[13]. Evidently, Lower Appellate Court has proceeded to decide the case only on the ground that even if the plaintiff is presumed to be daughter of Krishan Kumar, she would not be entitled to make challenge to the release deed which was executed prior to 20.12.2004. The aforesaid plea is also required to be revisited by the Lower Appellate Court in the light of the fact that whether daughter of Krishan Kumar would inherit the share of Kirshan Kumar in terms of Hindu Succession Act being sole surviving heir, irrespective of her status of being coparcener as per Amendment Act 2005. The Court would also be obligated to consider whether right of inheritance of daughter of Krishan Kumar is not dependent upon provisions of Amendment Act 2005.

[14]. It is a settled principle of law that application for additional evidence at the appellate stage has to be decided along with the main appeal. The effect of such Amendment has to be seen while deciding the appeal by the Lower Appellate Court. The decision on the application for additional evidence by the Lower Appellate Court on the same day, not reflecting in the impugned judgment and decree, would be totally illegal. Lower Appellate Court has not dealt the case issue wise and issue wise findings have not been returned, therefore, the case needs to be

revisited by the Lower Appellate Court as per ratio of **Harjit Grewal's case (supra)**

[15]. At this stage, I deem it appropriate to direct Lower Appellate Court to decide the appeal on merits by referring to the findings recorded by the trial Court under each and every issue. The effect of inheritance of the appellant being a legal sole surviving heir viz-a-vis Amendment Act of 2005, has to be answered by the Lower Appellate Court with reference to legal position. The application for additional evidence has to be decided along with the main appeal.

[16]. In the light of aforesaid facts and requirement of law, I set aside the judgment and decree dated 31.03.2014 passed by the Lower Appellate Court and remand this case to the Lower Appellate Court for fresh decision in accordance with law.

[17]. Both the parties are directed to appear before Lower Appellate Court on 01.08.2018.

(RAJ MOHAN SINGH)
JUDGE

05.07.2018

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No