

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.6253 of 2014 (O&M)

Date of Decision: 26.06.2018

Maan Jain

..... Appellant

Versus

Suraj Parkash Jain and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Keshav Partap Singh, Advocate
for the appellant.

Mr. Adarsh Jain, Advocate
for respondents No.2 to 6.

ANIL KSHETARPAL, J.

CM-14893-C-2014

Prayer in the application is for condonation of delay of 259 days in filing the appeal.

For the reasons given in the application which is supported by an affidavit, the delay is condoned and the application is allowed.

CM-14894-C-2014

Delay of 15 days in re-filing the appeal is condoned and the application is allowed.

Main Case

Defendant No.2-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

In the considered opinion of this Court, the following substantial question of law arise for determination:-

“Whether the property received by a common ancestor of the parties to the litigation from his father under Section 8 of the Hindu Succession Act, 1956 is a co-parcenary property?”

Fakir Chand was having three sons namely Rattan Singh, Sajjan Singh and Jawahar Singh. Fakir Chand died and mutation of inheritance was sanctioned in favour of his three sons on 10.06.1935. Rattan Singh died issueless, so share of Rattan Singh also devolved upon Sajjan Singh and Jawahar Singh in equal share. Sajjan Singh died intestate leaving behind Balwant Singh and other class I heirs including daughters. The property of Sajjan Singh was succeeded as per Section 8 of the Hindu Succession Act, 1956 and the mutation was entered on 05.06.1967 which was ultimately sanctioned on 12.11.1967.

Dispute now is with regard to the estate of Balwant Singh who inherited the property from his father Sajjan Singh under Section 8 of the Hindu Succession Act, 1956. Balwant Singh has left behind three sons namely Suraj Parkash Jain-plaintiff No.1, Om Parkash Jain-defendant No.1 and Anil Parkash Jain-defendant No.4. It is undisputed that Balwant Singh was serving in Indian Railways and after retirement, he settled in Charkhi Dadri, District Bhiwani and started working as a Typist in the Court Complex. It is also admitted fact that Suraj Parkash Jain, the plaintiff No.1 is settled from very beginning in Bikaner (Rajasthan) whereas Om Parkash Jain, defendant No.1 son of Balwant Singh is settled in Canada for the last 20 years and Anil Parkash Jain, the third son was earlier residing in Canada, is presently residing in United States of America since 1998. Balwant Singh has left behind five daughters and all the daughters are

married and settled in their respective matrimonial homes outside Charkhi Dadri.

Balwant Singh executed a Will dated 28.04.1997 bequeathing his property mentioned in the plaint in favour of defendant No.1 (Om Parkash Jain, son) and defendant No.2 (Maan Jain, daughter-in-law and wife of Om Parkash Jain). The plaintiff claimed that in fact defendant No.2 is not married wife of defendant No.1. Sh. Balwant Singh died on 10.06.1998 and the Will was got registered after the death of Balwant Singh on 28.08.2000 after publication of a notice in the newspaper calling for objections, if any. Originally, the suit was filed by Suraj Parkash Jain, plaintiff No.1. Subsequently, proforma defendants namely daughters of Balwant Singh got themselves transposed as plaintiffs. The Will dated 28.04.1997 was claimed to be forged and fabricated and defendant No.2 was asserted to be not related to Sh. Balwant Singh.

The defendant No.2-appellant contested the suit and claimed that she is legally wedded wife of defendant No.1-Om Parkash Jain and Balwant Singh, the testator whose property is in dispute used to reside with her after the death of his wife in the year 1991-1992. She claimed that the property is not a co-parcenary property. She further claimed that Om Parkash Jain was previously married to Smt. Mridula Rani but such marriage was dissolved by a decree of divorce on 01.08.1978 and marriage between defendant No.1 and 2 was solemnized on 16.08.1987 and since then, she is performing her matrimonial obligations.

Both the Courts below have held that the property in the hands of Balwant Singh was Hindu Mitakshra co-parcenary property and therefore, Balwant Singh was only entitled to bequeath his 1/5th share in

favour of defendant No.2 by a testamentary document. The suit has been partly decreed. The appeal filed against the same has also been dismissed.

Now the stage is set for considering the question of law culled out.

It is not disputed that when Sajjan Singh, father of late Sh. Balwant Singh Jain died, the property devolved upon all class-I heirs in the year 1957 including Balwant Singh and his sisters. Once Balwant Singh got the property by way of succession under Section 8 of the Hindu Succession Act, 1956 in the year 1957, the property in the hands of Balwant Singh could not be held to be co-parcenary as the property had been divided among class-I heirs of Sajjan Singh and Balwant Singh got a share in the same. A successor who gets the property under Section 8 of the Hindu Succession Act, the property received, cannot be held to be a co-parcenary property.

Still further, plaintiff No.1 i.e. Suraj Parkash Jain himself claims that he succeeded to the residential house at Bikaner which was received by Sh. Balwant Singh Jain from his father Sajjan Singh through a testamentary document which was executed by Sh. Balwant Singh Jain two days before his death. If the property in the hands of Balwant Singh Jain succeeded from Sajjan Singh was a co-parcenary property, then even the house at Bikaner which was bequeathed exclusively in favour of Suraj Parkash Jain was not valid. However, Suraj Parkash Jain rather than claiming that the entire property at the hands of Balwant Singh Jain received from Sajjan Singh was a co-parcenary property choose to file the suit selectively to only claim that the property which was bequeathed by Balwant Singh Jain in favour of defendant No.1 and 2 was a co-parcenary

property.

It is proved on file that the family of Balwant Singh Jain was separate. Om Parkash Jain, defendant No.1 is settled in Canada for the last 20 years. Suraj Parkash Jain, plaintiff no.1, who also retired from Railways is settled separately at Bikaner and the house owned by Balwant Singh Jain has been bequeathed exclusively in his favour by a testamentary document. The third son, Anil Parkash Jain who was initially residing in Canada is now settled in USA. All the daughters are married and settled in their matrimonial homes. Balwant Singh Jain was residing in Charkhi Dadri along with defendant No.2-appellant, Smt. Maan Jain who is proved to be married wife of Om Parkash Jain son of Balwant Singh Jain.

From the reading of the evidence, it is established that sons of Balwant Singh were not having very good relations with their father and it was Maan Jain, the daughter-in-law, the appellant who was taking care of Sh. Balwant Singh Jain after the death of his wife in the year 1991-1992.

Both the Courts below have found that the testamentary document executed by Sh. Balwant Singh Jain in favour of defendants No.1 and 2 dated 28.04.1997 is proved on file in accordance with Section 68 of the Indian Evidence Act, 1872.

In view of the aforesaid factual position, it is established that there was no Mitakshara co-parcenary between late Sh. Balwant Singh and his sons. Had there been any Mitakshra co-parcenary in existence on the death of Sajjan Singh, the property would not have been inherited by Balwant Singh and other daughters of Sajjan Singh under Section 8 of the Hindu Succession Act, 1956, but would have devolved upon under Section 6 of the Act of 1956. Still further, had there been any Mitakshara co-

parcenary family residential house at Bikaner which was bequeathed by Balwant Singh exclusively in favour of Suraj Parkash Jain, the plaintiff No.1 was not also permissible. Suraj Parkash Jain does not dispute the correctness of the testamentary document bequeathing the residential house at Bikaner exclusively in his favour.

Hon'ble Supreme Court has recently examined this issue in the context of amendment in the year 2005 brought in Section 6 of the Hindu Succession Act, 1956 in the judgment reported as Uttam Vs. Saubhag Singh and others, (2016) 4 SCC 68. Para 18 of the aforesaid judgment can be extracted for ready reference:-

“18. Some other judgments were cited before us for the proposition that joint family property continues as such even with a sole surviving coparcener, and if a son is born to such coparcener thereafter, the joint family property continues as such, there being no hiatus merely by virtue of the fact there is a sole surviving coparcener. Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe, Sheela Devi v. Lal Chand and Rohit Chauhan v. Surinder Singh were cited for this purpose. None of these judgments would take the appellant any further in view of the fact that in none of them is there any consideration of the effect of Sections 4, 8 and 19 of the Hindu Succession Act. The law, therefore, insofar as it applies to joint family property governed by the Mitakshara School, prior to the amendment of 2005, could therefore be summarised as follows:

(i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).

(ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in

Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.

(iii) A second exception engrafted on proposition (i) is contained in the proviso to section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.

(vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with Section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants-in-common and not as joint tenants.”

If a co-parcenary property or a joint Hindu family property or ancestral property is succeeded on the death of common ancestor under Section 8 of the Hindu Succession Act, the property received under an intestate succession shall be self-acquired property and not co-parcenary property. Almost on pari-materia facts, Hon'ble Supreme Court in the case of Bhanwar Vs. Puran and others 2008(3) SCC 87 have held that once in a case of intestate succession, the property is succeeded under Section 8 of

the Hindu Succession Act, 1956, the same shall be individual property of the heir. The Hon'ble Supreme Court has relied upon previous judgments i.e. Commissioner of Wealth Tax, Kanpur Vs. Chander Sen 1986(3) SCC 567 and Yudhishter Vs. Ashok Kumar (1987) 1 SCC 204.

On the death of Sajjan Singh, a common ancestor, the property was mutated in favour of seven class-I heirs (including Balwant Singh whose estate is in dispute, 3 daughters and widow-Bhuri). Hence, on the death of Sajjan Singh, the property did not devolve upon the heirs under Section 6 of the Hindu Succession Act, 1956 and there is no dispute about the same.

In view of the discussion made above, question of law is answered in favour of the appellant.

The defendant No.2-appellant had filed a counter claim claiming that defendants No.1 and 2 be declared owner in possession of the land in dispute in equal share bequeathing testamentary succession of Balwant Singh son of Sajjan Singh on 28.04.1997. Since both the Courts below have already held that the testamentary document dated 28.04.1997 is proved on file and there is no challenge, therefore, defendants No.1 and 2 are entitled to be declared owners in possession of the property in question.

In view of the discussion made above, the judgments passed by the Courts below are set aside and the suit filed by the plaintiffs is dismissed whereas counter claim made by defendant No.2 is allowed.

Regular second appeal is allowed.

(ANIL KSHETARPAL)
JUDGE

26.06.2018
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No