

In the High Court of Punjab and Haryana at Chandigarh

**RSA-2998 of 2018(O&M)
Date of Decision: 26.9.2018**

Sunil Dutt

---Appellant

versus

Yaadram and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Brijender Kaushik, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against the judgment and decree dated 5.3.2018 passed by the Additional District Judge, Rewari whereby appeal preferred by respondents No. 1 and 2 against the judgment and decree dated 8.8.2017 passed by the trial court was accepted and judgment and decree passed by the trial court were set aside and suit filed by the appellant-plaintiff claiming 1/3rd share in suit property on the basis of natural succession to Sh. Surja son of Magni was ordered to be dismissed.

The appellant-plaintiff filed suit for declaration and injunction on the premise that suit property i.e. land measuring 23 kanal 4 marlas, detailed in para 2 of the plaint was joint Hindu family ancestral coparcenary property in the hands of his father Surja and Will bearing wasika No. 3/3 dated 5.4.2006 alleged to be executed by Surja in favour of respondents No.

1 and 2 and mutation No. 801 sanctioned on the basis of Will are illegal, null and void and not binding upon rights of the plaintiff/appellant. It is averred that suit land was inherited by Surja from his father Magni and by Magni from his father Kirpo. Surja was not in a fit state of mind and health to execute any Will in favour of the respondents. He was blind and hard of hearing. He never intended to exclude the appellant from inheritance.

The sole submission made by counsel for the appellant is that as the suit land was joint Hindu family coparcenary property in the hands of Sh. Surja, he was not entitle to execute the Will more than his share to the extent of 1/4th in the suit land. Counsel for the appellant has fairly conceded that there is no documentary evidence on record to substantiate plea of the appellant that suit property was ancestral coparcenary property in the hands of Surja but the said fact stands proved in view of admission made by Bijender Singh DW1 and Yaadram defendant No. 1 DW2. In support of his contention, he has relied upon judgment of this Court **Mehar Singh and another vs. Faqir Chand and others 1996(2) RRR 388.**

I have heard counsel for the appellant and perused the paper book particularly the judgment passed by the Court in Appeal.

The Appellate Court, in paras 22 and 23 of the judgment has held to the following effect:-

“In the instant case, there has been inconsistency between the oral admission and the revenue record produced on record. It is only the property inherited by a Hindu from his father, father's father or father's father's father that may be termed as ancestral property. The essential feature of ancestral property is that if the person inheriting it has a son, grand son or great grand son,

they become coparceners with him and become entitled to it due to their birth. The respondent has relied upon mutation nos. 153 and 154, Ex. P3 and Ex. P4 respectively. The mutation No. 153 pertains to the inheritance of Kirpo son of Sewa whereas mutation No. 154 pertains to the inheritance of Magni son of Kirpo. Both these mutations were sanctioned in the year Samwat 1988 which implies that they were sanctioned somewhere in the year 1932 much prior to the Consolidation. However no such revenue record has been produced by respondent to show that the suit land comprising of specific kill no. 19/2, 20 of rect. no. 10 and killa nos. 15 and 17 of rect. no. 11 is the same as was inherited by Magni from his father Kirpo or by Surja from his father Magni. Neither 'naqshahaqdarwar' nor 'Khatoni Paimaish' nor 'Khatoni Istemal' pertaining to suit land has been produced to prove that the suit land comprising of specific killa numbers was allotted to Surja in lieu of the land which was earlier owned by his father Magni during consolidation proceedings. No **Excerpt/intkabh** to that effect has been produced on record to prove that the suit land was ancestral coparcenary property in the hands of Surja qua the respondent. Mere placing on record the copies of mutation no. 153 and 154 by itself is not sufficient enough to prove that the suit land was ancestral property in the hands of Surja qua the respondents.

23. As already observed mere admission as to ancestral nature of the property contrary to documentary evidence cannot

be accepted. The observations made by the learned lower court to the effect that from admission made by DW-1 Bijender the witness of the Will and DW2 Yadram (appellant), it stands proved that the suit land was ancestral in nature thus cannot be sustained. Even admission to the effect that no property was purchased by Surja during his life time by itself is also no ground to presume that the suit land was ancestral or coparcenary property in his hands qua the respondent. Further the observations made by the learned lower court to the effect that Surja had no legal right to execute the Will pertaining to ancestral property also cannot be accepted in view of **Section 30 of the Hindu Succession Act, 1956** which says that any Hindu may dispose of by Will or other testamentary disposition any property which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925, or any other law for the time being in force and applicable to Hindus. The **Explanation** to this section also says that the interest of a male Hindu in a mitakshtra coparcenary property shall notwithstanding anything contained in this Act or any other law for the time being in force be deemed to be property capable of being disposed of by him within the meaning of this section.”

Counsel for the appellant has not disputed factual findings that no revenue record has been produced to show that suit land comprising killa Nos. 19/2 and 20 of Rect. No. 10 and killa Nos. 15 and 17 of Rect. No. 11 is the same land as was inherited by Magni from his father Kirpo or by Surja

from his father Magni. Neither 'naqshahaqdarwar' nor 'khatoni paimaish' nor 'khatoni istemal' qua suit land have been produced to prove that suit land was allotted to Surja in lieu of land which was earlier owned by his father. No excerpt/intqaal has been produced to prove that suit land was ancestral property in the hands of Surja qua the respondents. In the given scenario, appellant cannot derive any advantage to his contention from alleged admission by Bijender Singh DW1 and Yaadram DW2 that suit land was ancestral coparcenary property in the hands of Surja and the appellant acquired right therein by way of birth.

In **Mehar Singh and another's case (supra)**, dispute between the parties was not with regard to coparcenary property. On the contrary, the plaintiffs alleged that they are Saini by caste which is pre-dominantly agricultural tribe of Haryana. According to custom prevalent in that caste, no person can dispose of ancestral property without consideration and legal necessity, therefore, the ancestral property in the hands of defendant No. 2 viz-a-viz plaintiffs could not be sold except for legal necessity.

This Court has taken into consideration compromise deed dated 21.12.1974 Ex. P1 wherein it had been agreed upon by defendant No. 2 that suit land was ancestral property and that he would not sell, mortgage or transfer by Will in any manner.

In the case at hand, no such admission has been made by Surja that suit land was inherited by him from his father Magni. The Court in Appeal has rightly held that any such admission by Bijender and Yaadram would not enure to benefit of the appellant as he miserably failed to substantiate his plea that suit land was inherited by Surja from his father Magni. This apart, every property is presumed to be self acquired property

in the hands of holder unless proved otherwise. The admission with regard to a particular property being coparcenary property would not discharge the onus placed upon the plaintiff. In this view of the matter, the appellant cannot derive any advantage to his contention from the referred authority.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

26.9.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No