

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

Date of decision: 17.9.2018

1.

RSA No.35 of 2017(O&M)

Gurwinder Singh and another

....Appellants

VERSUS

Jit Singh and others

.....Respondents

2.

RSA No.358 of 2017(O&M)

Gurwinder Singh and another

....Appellants

VERSUS

Sukhdev Singh and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. K.R. Dhawan, Advocate for the appellants.

REKHA MITTAL, J.

This order will dispose of RSA Nos.35 and 358 of 2017 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No.35 of 2017.

The appellants/plaintiffs challenged sale of suit property by Jit Singh – defendant No.1 in favour of defendants No.2 and 3 primarily on the ground that the sale is without consideration and legal necessity, therefore, the same is not binding on the appellants and is liable to be set aside. It is argued that the appellants are grandsons of Jit Singh son of

Chet Singh being sons of Pala Singh son of Jit Singh. The plaintiffs and defendant No.1 are Jat Sikhs and governed by the Mitakshara branch of Hindu Law. The land in dispute is the ancestral coparcenary property in the hands of respondent No.1 qua the plaintiffs. Major Singh – plaintiff No.1 and Pala Singh acquired right to the extent of 1/3rd share each in the suit land by way of birth. Respondent No.1 is addicted to opium, wine etc and is wasting ancestral property without any legal necessity to satisfy his bad habits. He has alienated the land in dispute vide registered sale deed dated 19.05.2004 in favour of defendants No.2 and 3.

The trial Court decreed the suit by accepting plea of plaintiffs including appellants that suit land was Joint Hindu Family Coparcenary Property in the hands of Jit Singh – defendant No.1 and the sale deed executed by Jit Singh in favour of defendants No.2 and 3 is without legal necessity or for benefit of estate and accordingly the sale was set aside. However, appeal preferred by Jit Singh against judgment and decree dated 13.10.2012 was allowed by the Additional District Judge, Ferozepur whereby it has been held that the appellants and their co-plaintiff have failed to substantiate their plea that suit land was Joint Hindu Family Coparcenary Property in the hands of Jit Singh.

The Court in appeal in para 15 of the judgment has held, extracted hereinbelow for ready reference:-

“15..... I agree with the contention of learned counsel for the defendants that the plaintiffs have failed to prove that suit property in the hands of Jit Singh was ancestral and coparcenary property. The execution of the sale deed by defendant No.1 in favour of defendants No.2 and 3 is however not denied. In fact, it was the duty of plaintiffs to plead and

prove on record that the suit land was inherited by Jit Singh from his great grand father i.e. three degree in male line. However, the plaintiff s have failed to produce even a single document on record to prove that the suit land was inherited by Chet Singh from his father Bhanga Singh and that Bhanga Singh had inherited the property from his father. Even it has not been proved on record that Chet Singh was the owner of the land.....”

The sole submission made by counsel for the appellants is that mutation No.2406 Ex.P2/A qua inheritance to the estate of Chet Singh in favour of Jit Singh and the documents pertaining to consolidation of land in village Mansurdeva, Hadbast 328 Ex.P3/A, Ex.P4/A and Ex.P5/A were rightly relied upon by the trial Court to say that the land in dispute was inherited by Jit Singh from his father Chet Singh. It is argued that even if the appellants have not been able to lead evidence that Chet Singh inherited the suit land from his father Bhanga Singh and so on upwards, it becomes a fact that the suit land was ancestral property in the hands of Jit Singh, therefore, he was not competent to alienate the same without legal necessity or for benefit of estate.

I have heard counsel for the appellants, perused the paper-book particularly the judgments and decrees passed by the Courts.

Counsel for the appellants is not in a position to dispute the factual findings recorded by the Appellate Court that the appellants have failed to adduce any evidence to establish that suit land was inherited by Chet Singh from his father Bhanga Singh and Bhanga Singh from his father by way of natural succession. The appellants have even failed to prove that suit land was inherited by Jit Singh from his father Chet Singh. The

appellants have not got prepared excerpt to establish their plea that suit land measuring 16 Kanals 14 Marlas comprising Khasra No.15 Mushtil 24/2 (0-12), 25/2 (6-4), 19 Mushtil 14/2 (1-18) and 5(8-0) was allotted to Jit Singh in lieu of land inherited by him from his father Chet Singh, during consolidation proceedings.

The Jamabandi for the year 1955-56 Ex.P1/A records Jit Singh to be owner of land measuring 102 Kanals 15 Marlas including land comprised in the aforesaid khasra numbers. In the last column of this Jamabandi, there is reference to Mutation No.2406 of inheritance, 2675 of exchange, 2717 of *Hissedari* and No.2718 of partition. They have also produced document Exs.P2 and P2/A qua Mutation No.2406 sanctioned in the year 1948 qua inheritance to the estate left behind by Chet Singh in favour of Jit Singh, his son. Perusal of document Ex.P4/A, copy of Khatauni pamaish translated in Punjabi from Urdu makes it evident that the disputed khasra numbers were allotted in lieu of old khasra numbers but the old khasra numbers mentioned in ExP4/A cannot be connected with Mutation No.2406 sanctioned in favour of Jit Singh qua inheritance to his father Chet Singh.

As the appellants have failed to adduce clear, cogent and convincing evidence to connect the land in suit with the land which was inherited by Jit Singh from his father Chet Singh in the year 1948, the Court in appeal has rightly reversed the judgment and decree passed by the trial Court while negating plea of the appellants and their co-plaintiff that suit land was ancestral co-parcenary property in the hands of Jit Singh. This apart, if land inherited by Jit Singh from his father Chet Singh is mixed with land obtained from other sources, the appellants cannot raise the plea that suit land was co-parcenary property in which they acquired right by way of birth being grandsons of Jit Singh. That being so, challenge to sale of suit land by Jit

Singh in favour of defendants No.2 and 3 has rightly been rejected by the Court in appeal.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed in limine.

No order as to costs.

SEPTEMBER 17, 2018

‘D. Gulati’/Ashok

Whether speaking/reasoned

Whether reportable

(REKHA MITTAL)

JUDGE

yes/no

yes/no