

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

RSA No. 365 of 2018 (O&M)

Date of decision : August 02, 2018

Paramjit Kaur alias Tanjeet Kaur

.....Appellant

Versus

Sarban Singh and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Sukhmeet Singh, Advocate
for the appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 11.04.2017 passed by the learned Civil Judge (Junior Division), Faridkot whereby the suit filed by the appellant was dismissed. He is also aggrieved of judgment and decree dated 20.09.2017 passed by the learned District Judge, Faridkot, vide which his appeal has also been dismissed.

The appellant preferred a suit for declaration to the effect that she is the owner to the extent of 1/4th share of the property measuring 53 kanals 10 marlas which was stated to be Joint Hindu Family ancestral land and further declaration that the transfer deed/Tabdil Malkiatnama dated 27.10.2014 executed by respondent No. 1 in favour of respondent No. 2 is illegal, null and void, ineffective and inoperative qua the rights of the appellant. Respondent No. 1 - Sarban Singh (since deceased and represented by his legal representatives) was the appellant's father. Respondent No. 2 is the brother of the appellant.

Appellant pleaded that the parties to the suit are Jat Sikhs and

governed by Hindu law. Suit property was averred to be Joint Hindu family, coparcenary ancestral property. The appellant stated to be one of the coparceners was alleged to have pre-existing right in the suit land. Sarban Singh had two sons i.e. respondent No. 2 and Jasmail Singh (not party to the suit) besides two daughters i.e. the appellant and Gurmeet Kaur (not a party to the suit). Thus, it was claimed that the appellant being one of the coparceners had 1/4th share in the estate of respondent No. 1 – Sarban Singh. It was pleaded that the appellant and her sister were married. Their marriages were performed in a very simple manner without any kind of dowry. The appellant learnt about two transfer deeds dated 27.10.2014 and 13.11.2014 in favour of her brother – respondent No. 2 by her father. Mutations on the basis of the said transfer deeds were entered in revenue records on 25.11.2014. It was stated that the appellant's father and brother - respondents No. 1 and 2 were trying to alienate/transfer the suit land to some other persons with intention to grab her share. Accordingly, the suit was filed.

Appellant's father and brother - respondents No. 1 and 2 contested the suit by taking various preliminary objections besides denying the same on merits. It was stated that marriages of both the daughters were performed by the defendant – father with great pomp and show while giving handsome dowry. It was denied that the suit property was Joint Hindu family, coparcenary and ancestral property. The transfer deeds were executed by the defendant - father in favour of his own son out of his own free will, without any kind of coercion, to the knowledge of the appellant as well as the other two children, who were not even impleaded as parties. It was, thus, prayed that the suit be dismissed.

Replication was filed.

Following issues on the basis of the pleadings of the parties were framed by the learned trial Court:-

1. Whether the plaintiff entitled a declaration to the effect that plaintiff is owner to the extent of 1/4th share as prayed for?
OPP
2. Whether the plaintiff is entitled a further declaration that the Tabdil Malkiatnamas/transfer deeds dated 27.10.2014 and mutation on the basis of these Tabdil Malkiatnamas are null and void? OPP
3. Whether the plaintiff is entitled a relief of permanent injunction as prayed for? OPP
4. Whether the plaintiff is entitled any other relief as prayed for? OPP
5. Whether the suit of the plaintiff is bad on account of non-joinder of necessary parties?OPD
6. Whether the suit of the plaintiff is not properly valued as prayed for?OPD.
7. Whether the plaintiff is concealed the material facts from this Hon'ble Court?OPD.
8. Whether the plaintiff has no cause of action against the defendant?OPD.
9. Relief.

Evidence was led by both the parties.

Learned trial Court decided issues No. 1 to 4 against the plaintiff-appellant and in favour of the respondent-defendants. Issues No. 5 to 7 were neither raised nor pressed. Issue No. 8 was decided in favour of defendants. Suit filed by the appellant was dismissed vide judgment and decree dated 11.04.2017 passed by the learned Civil Judge (Junior Division), Faridkot while specifically holding that the appellant had failed to prove that the property in question was ancestral, coparcenary property.

Appeal filed by the appellant was also dismissed by learned District Judge vide judgment and decree dated 20.09.2017. Aggrieved therefrom, the present appeal has been filed by the appellant.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in dismissing the appellant's suit while holding that the suit property in question is not ancestral in nature. Learned counsel refers to the jamabandies (Exs.P1 to P11) to contend that the land in question was inherited by Sarban Singh from his father Bishan Singh, therefore, it is ancestral in nature. No consideration had passed when the land in question was transferred by the instruments dated 27.10.2014 and 13.11.2014 in favour of respondent No. 2. It is, therefore, prayed that the impugned judgments and decrees be set aside, consequently, decreeing the suit filed by the appellant.

I have heard learned counsel for the appellant and have perused the file as well as photocopies of the relevant record furnished in Court today.

It is not in dispute that the appellant is the daughter of respondent No. 1 – Sarban Singh, who has since passed away in the year 2017. Respondent No. 2 is the appellant's real brother. Sarban Singh admittedly has four children - two sons and two daughters. The appellant and respondent No. 2 being one of the sons and daughters. The appellant has set up a case that the land in question was Joint Hindu family, coparcenary, ancestral property in the hands of her father Sarban Singh. However, this averment is not substantiated by the evidence on record. Learned trial Court has rightly observed that there is nothing on record to reflect that the property in question is Joint Hindu family, coparcenary

ancestral property in the hands of Sarban Singh. The jamabandies, mutation and pedigree table (Exh's P1 to P19) indeed do not advance the case of the appellant to prove the ancestral nature of the land. It does not reflect devolution of the property from three immediate paternal ancestors. Moreover, it is not in dispute that the appellant had sought declaration against her father who was alive at that time whereas it is a settled position that no son or daughter being coparcener can file a suit against his/her father for partition during the life time of the father. Learned District Judge has rightly observed that there are specific recitals in both the transfer deeds to the effect that the appellant's father performed marriages of his daughters in a befitting manner and they were living happily in their respective in-laws houses. Sarban Singh expressed his satisfaction and pleasure at the services rendered by his son Gurmail – respondent No. 2. It is further mentioned that in sound disposing mind he had, thus, executed the transfer deeds in favour of his son. There is nothing on record to prove that the said transfer deeds are fabricated or an outcome of any kind of fraud. There is indeed no question of any consideration being passed when the property in question is the subject matter of the transfer deeds. Appellant's father - Sarban Singh filed his written statement denying the claim of the appellant. He has testified before the learned trial Court as DW1 prior to his death. I have perused the statement of Sarban Singh DW1 which was furnished in Court during the course of hearing. Sarban Singh DW1, specifically stated that he has transferred 40 kanals of his land in favour of respondent No. 2 – Gurmail Singh and 13 kanals, 14 marlas in favour of his other son Jasmail Singh. He specifically denied that the marriage of the appellant was solemnised in a simple manner or that he not give sufficient amount at the

time of her marriage. DW1 Sarban Singh has denied the suggestion that the transfer deeds were executed by him under any kind of pressure. Concurrent findings of fact have been returned by both the learned courts below on a wholesome and proper appreciation of evidence on record, which do not call for any interference by this Court.

In my considered opinion, no question of law much less a substantial question of law is involved in this regular second appeal for the consideration of this Court.

No other point has been raised or argument addressed by learned counsel for the appellant.

Learned counsel for the appellant is unable to point out any illegality and infirmity in judgment and decree dated 11.04.2017 passed by the learned Civil Judge (Junior Division), Faridkot as well as judgment and decree dated 20.09.2017 passed by the learned District Judge, Faridkot, which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

August 02, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No