

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

RSA No.4318 of 2017 (O&M)

Date of decision:12.11.2018

Tejinder Singh and another

... Appellants

Vs.

Gulzar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Bansal, Advocate
for the appellants.

AMIT RAWAL J.

The appellant-plaintiffs have not been successful in claiming the injunction in respect of land measuring 34 kanals 17 marlas out of land measuring 318 kanals 13 marlas.

It was alleged that plaintiffs, Tejinder Singh and Jagdeep Singh sons of Gulzar Singh son of Dalip Singh had a right by birth in the property as same at the hands of Waryam Singh son of Jawahar Singh, their great grand father, was ancestral. After his death, Dalip Singh and Shiv Singh inherited the property in equal shares. Dalip Singh and Shiv Singh sold the land of village Harsi Pind, Tehsil and District Hoshiarpur and in lieu of the income from the land so sold and purchased the land as under:-

“a) Sh. Dalip Singh purchased 2/3 share of the land measuring 318 kanals 13 marlas in the name of Mohinder Singh, Gurbachan Singh, defendants.

b) Sh. Shiv Singh and Waryam Singh deceased purchased 1/3 share.”

Gulzar Singh filed a civil suit against Mohinder Singh, Gurbachan Singh, Amrik Singh, Jit Singh and Fauza Singh, sons of Dalip Singh son of Waryam Singh which was decided on 30.10.2000 but in those proceedings, deceased Dalip Singh admitted the nature of the property to be ancestral. Since defendants no.1 to 6 attempted to sell the property inherited by the plaintiffs being ancestral, prejudice was caused, thus, sought the declaration and consequential relief of injunction.

Defendants no.4 to 8 and 12 to 21 did not appear but suit was contested by defendant no.1, 2, 3, 5 and 22. The nature and character of the property as ancestral was denied. It was alleged that in the previous proceedings, vide judgment and decree dated 30.10.2000, the property was not held to be ancestral. Defendant no.5 had taken the same stand as that of defendant no.1. Defendant no.22 claimed to be owner of land measuring 12 kanals 0 marla and 15 kanals 12 marlas by virtue of two sale deeds dated 30.12.2004 and 6.10.2005.

The plaintiff examined four witnesses and brought on record Ex.PA to Ex.PJ, i.e., jamabandi for the year 1976-77, 1966-67 and 2001-02. On the other hand, defendants examined two witnesses and brought on record copy of judgment dated 21.11.2000 (Ex.D2) rendered in civil suit no. 179/1992-2000 titled as Jit Singh and others Vs. Gurbachan Singh and others.

On preponderance of the evidence, the trial Court dismissed the suit holding the property to be not ancestral. The appeal taken before the Lower Appellate Court was also dismissed.

Mr. Sandeep Bansal, learned counsel appearing on behalf of the appellants submitted that the Courts below have abdicated in not noticing the judgment and decree dated 30.10.2000, wherein, Dalip Singh admitted the nature of the property to be ancestral, therefore, onus on behalf of the appellants to prove the nature and character of the property stood discharged. In other words, it was submitted that there was no requirement to summon and prove the revenue excerpt as jamabandi brought on record revealed that Gulzar Singh inherited the property from Dalip Singh, who from Waryam Singh, thus, there is gross illegality and perversity in the findings under challenge.

I am afraid the aforementioned arguments is not sustainable as in the judgment dated 21.11.2000, Ex.D2, issue no.1, with regard to property as Joint Hindu Family property was framed. The aforementioned findings were rendered against the plaintiffs. For the sake of brevity, issue no.1 and relevant portion of findings rendered therein are extracted herein below:-

Issue no.1

“1 Whether the land in dispute was Joint Hindu Family property of the plaintiffs and defendants no.1 to 5? OPP

“The onus to prove this issue was placed upon the plaintiffs who to prove this issue were required to prove first the

existence of the Joint Hindu Family with a common head and then the plaintiffs were required to prove that the property in dispute was purchased from the Joint Hindu Family funds for & on behalf of Joint Hindu Family. Plaintiffs have examined Dalip Singh who is also a defendant in this case and have also themselves stepped into the witness box as PW4 and PW5. Another witness Bishan Singh has been examined as PW6. PW1 and PW2 are official witnesses. Dalip Singh while appearing as PW3 has not even uttered even a single word regarding existence of any Joint Hindu Family or purchase of the property in dispute from any alleged Joint Hindu Family funds. Similarly, plaintiff no.1 Jit Singh, while appearing as his own witness, as PW4 has also not uttered even a single word regarding the existence of any Joint Hindu Family. Amrik Singh, plaintiff has stated that the land was purchased for Joint Hindu Family and that the installments were paid by his father. It is further stated by this witness that the Joint Hindu Family stood disrupted after 1972. Apart from the statement of Amrik Singh, there is no other evidence in the form of oral as also documentary which could prove the existence of any Joint Hindu Family or any Joint Hindu Family Funds. No bank account of any other documentary evidence has been adduced which could show that there was any joint account of the family from which the amount was withdrawn to purchase the land in

dispute. PW5 has stated that the price of the land in dispute was paid by his father Dalip Singh but Dalip Singh while appearing as PW3 has not stated that the price of the land has been paid by him. The evidence as discussed above is therefore, most insufficient to return the findings in favour of the plaintiffs. This issue is as such decided against the plaintiffs.”

It is conceded position on record that the judgment and decree dated 21.11.2000, Ex.D2 had attained the finality. In such circumstances, claim of the plaintiffs with regard to nature of the property is wholly erroneous and devoid of merit.

As an upshot of my findings, arguments of Mr. Sandeep Bansal, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 12, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No