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

**Civil Revision No.5327 of 2018 (O&M)
Date of Decision:11.02.2019**

Gulzar Singh

.....Petitioner

Vs

Balwinder Kaur and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioner.

Mr. Harminder Singh, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 06.02.2018 passed by the Civil Judge (Jr. Divn.) Batala vide which the application under order 7 Rule 11 CPC for rejection of plaint was dismissed.

[2]. Brief facts are that the plaintiff filed a suit for declaration to the effect that the plaintiff and defendants No.1 to 3 and 5 to 6 are owners in possession over the suit land on the basis of natural inheritance of the estate of deceased Sardar Pritam Singh. Thereafter, the original plaint was amended. In view of

amended plaint, plaintiff claimed that she is co-sharer and owner in joint possession of the land fully detailed in schedule of properties. The land was inherited by Pritam Singh from his forefathers and the land was ancestral coparcenary joint Hindu family property of said Pritam Singh. The aforesaid recital is made in para No.1 of the amended plaint. In para no.5 of the amended plaint plaintiff claimed that after the death of Pritam Singh his estate was inherited by the plaintiff along with Khazan Singh (now deceased), defendant No.2, 3, 5 and 6 being sons and daughters of Pritam Singh and Gian Kaur defendant No.1 being wife in equal share with each taking $1/7^{\text{th}}$ share or $3/21^{\text{st}}$ share each therein.

[3]. Plaintiff further pleaded that Gian Kaur defendant No.1 had $2/7^{\text{th}}$ share. She died on 02.08.2012 during pendency of the suit. Her share was inherited by the plaintiff and defendants No.2 and 3 in equal shares with each $2/21^{\text{st}}$ share each therein. Thereafter plaintiff and defendants No.2 and 3 became co-owners in joint possession to the extent of $15/21^{\text{st}}$ share each having $5/21^{\text{st}}$ share therein. Defendants No.5 and 6 remained co-sharers in joint possession having remaining $6/21^{\text{st}}$ share with each having $3/21^{\text{st}}$ share therein. In this manner plaintiff claimed herself to be co-sharer in joint possession having $5/21^{\text{st}}$ share in the suit property inherited from his father Pritam Singh.

[4]. Defendants No.2 and 4 alleged that the deceased Pritam Singh had executed Will in their favour. The same was claimed to be wrong and denied. The Will was claimed to be illegal, forged, fabricated, null and void and was not related to the estate of Pritam Singh.

[5]. Defendant No.2/petitioner filed an application under Order 7 Rule 11 CPC for rejection of plaint on the ground that in para no.1 of the amended plaint the plaintiff has pleaded that the suit land was inherited by Pritam Singh from his forefathers and the same was ancestral coparcenary joint Hindu family property. The said fact was admitted in para no.2 of the plaint as well. The said Pritam Singh had expired on 29.02.2004 before amendment of the Succession Act, 2005, therefore, succession of the property of Pritam Singh was not available to the plaintiff as said Pritam Singh has expired before amendment in the Hindu Succession Act in 2005. Plaintiff had no locus to file the present suit.

[6]. The trial Court has dismissed the application on the premise that the claim set up by the plaintiff was that the deceased had joint Hindu coparcenary property and he died leaving behind the plaintiff and defendants being his daughter and sons. Pritam Singh had died leaving behind a female relative specified in clause (1) of the Schedule, therefore, as per

proviso to Section 6 of the Hindu Succession Act, 1956 would be attracted and plaint can be rejected on this ground. The proviso appended to the sub-Section (1) of Section 6 of the said Act creates an exception. It supports the cause of the plaintiff.

[7]. Learned counsel for the petitioner submitted that even the plea of property being coparcenary was sought to be withdrawn. The Civil Judge (Jr. Divn.) Batala vide order dated 20.11.2017 observed the following in para no.8 of the order:-

"8. Further, as regards the amendment sought in para no.1 of the plaint it can be said that the facts sought to be incorporated in this paragraph by the applicant are that the properties mentioned in Schedule A to H were owned and possessed by Pritam Singh, which after his death was inherited by defendant no.1, plaintiff, defendant no.2 & 3, Khazan Singh (now deceased) and by defendant no.5 & 6. Moreover, in respect of this amendment, it was argued by learned counsel for defendants that earlier in the plaint, plaintiff has alleged the suit property to be coparcenary, joint Hindu family property, but by way of this amendment she wants to change her stand by saying that suit property was owned and possessed by Pritam Singh only. In this respect, it can be said that it is evident from the perusal of file that in Para no.1 of the plaint, plaintiff has described the suit land as coparcenary, joint Hindu family property. However, this fact has not been mentioned by the plaintiff/applicant in this application and under the garb of amendment of para no.1 she wants to withdraw from the above stated stand taken by her in respect of the nature of the suit property, which is not permissible under law. Thus, she is not allowed to delete the fact that suit property was inherited by deceased Pritam Singh from his forefathers and the said

property was coparcenery, joint Hindu family property.”

[8]. Learned counsel further submitted that the plaintiff was not allowed to delete the fact that the suit property was inherited by deceased Pritam Singh from his forefathers and the suit property was ancestral joint Hindu family coparcenary property.

[9]. Learned counsel by relying upon **Rakhi Gupta vs. Zahoor Ahmad and others, 2012(15) R.C.R. (Civil) 28; Raj Mohinder Singh vs. Surinder Kaur @ Surinder and others, 2019(1) R.C.R. (Civil) 763; Prakash and others vs. Phulavati and others, 2015(4) R.C.R. (Civil) 952; Narender Kumar Nangia vs. Harjinder Pal Singh, 2018(1) Law Herald 337 and Madanuri Sri Rama Chandra Murthy vs. Syed Jalal, 2017(3) R.C.R. (Civil) 64** contended that in view of positive case set up by the plaintiff in the amended plaint, nature of the property is ancestral, coparcenary joint Hindu family property. Pritam Singh died on 29.02.2004 i.e. prior to the commencement of Amendment Act, 2005, therefore, property was devolved on male coparcener by way of survivorship under Section 6 of the Hindu Succession Act and right of alleged female coparcener cannot be entertained. Plaintiff has no cause of action. The suit filed by her has to be rejected in terms of Order 7 Rule 11 CPC.

[10]. On the other hand, learned counsel for respondent

No.1 relied upon **Sheela Devi vs. Lal Chand and another, 2006(4) R.C.R. (Civil) 912; Man Singh (D) by LRs vs. Ram Kala (D) by LRs & Ors., 2011(1) R.C.R. (Civil) 333; Smt. Raj Rani vs. The Chief Settlement Commissioner, Delhi and others, 1984 AIR (SC) 1234; Jai Parkash vs. Smt. Ram Kali etc., 1974 RLR 327; Charan Kaur & Anr. vs. Smt. Gurdev Kaur & Ors., 2010(66) R.C.R. (Civil) 859 and Balbiri Devi vs. Tejbir Singh, 2010(3) R.C.R. (Civil) 35.**

[11]. I have considered the submission made by learned counsel for the parties and have also perused the material on record.

[12]. The expression “law” occurring in Order 7 Rule 11(d) CPC includes judicial decisions of the Hon’ble Apex Court. The authoritative pronouncement of the Hon’ble Apex Court is the law of land. The law declared by Hon’ble Apex Court under Article 141 of the Constitution of India is the law of land. Law includes not only legislative enactments, but also judicial precedents. Reference can be made to **Virender Kumar Dixit vs. State of U.P., 2014(9) ADJ 506** and **Bhargavi Constructions and another vs. Kothakapu Muthyam Reddy and others, 2017(4) RCR (Civil) 359.**

[13]. The Hon'ble Apex Court in **Prakash and others'** case

(supra) settled the controversy. The issue with regard to ancestral coparcenary joint Hindu family property devolving upon surviving coparcener only by survivorship when the original owner died prior to enforcement of Hindu Succession (Amendment) Act, 2005 is no more *res integra* in view of authoritative pronouncement in the aforesaid case. The controversy on the aforesaid provision has been set at naught by the Hon'ble Apex Court in para Nos.17, 18, 23 and 24 wherein following observations were made:-

*“17. The text of the amendment itself clearly provides that the right conferred on a 'daughter of a coparcener' is 'on and from the commencement of Hindu Succession (Amendment) Act, 2005'. Section 6(3) talks of death after the amendment for its applicability. In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text of the amendment. An amendment of a substantive provision is always prospective unless either expressly or by necessary intendment it is retrospective **Shyam Sunder Vs. Ram Kumar, 2001(3) R.C.R. (Civil) 754 : (2001) 8 SCC 24, Paras 22 to 27.** In the present case, there is neither any express provision for giving retrospective effect to the amended provision nor necessary intendment to that effect. Requirement of partition being registered can have no application to statutory notional partition on opening of succession as per unamended provision, having regard to nature of such partition which is by operation of law. The intent and effect of the Amendment will be considered a little later. On this finding, the view of the High Court cannot be sustained.*

18. Contention of the respondents that the Amendment should be read as retrospective being a piece of social

legislation cannot be accepted. Even a social legislation cannot be given retrospective effect unless so provided for or so intended by the legislature. In the present case, the legislature has expressly made the Amendment applicable on and from its commencement and only if death of the coparcener in question is after the Amendment. Thus, no other interpretation is possible in view of express language of the statute. The proviso keeping dispositions or alienations or partitions prior to 20th December, 2004 unaffected can also not lead to the inference that the daughter could be a coparcener prior to the commencement of the Act. The proviso only means that the transactions not covered thereby will not affect the extent of coparcenary property which may be available when the main provision is applicable. Similarly, Explanation has to be read harmoniously with the substantive provision of Section 6(5) by being limited to a transaction of partition effected after 20th December, 2004. Notional partition, by its very nature, is not covered either under proviso or under sub-section 5 or under the Explanation.

23. *Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20th December, 2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation.*

24. *On above interpretation, Civil Appeal No.7217 of 2013 is allowed. The order of the High Court is set aside. The matter is remanded to the High Court for a fresh decision in accordance with law. All other matters may be listed for hearing separately for consideration on 24th November, 2015.”*

[14]. There cannot be any dispute with regard to the propositions held in the precedents cited before this Court. The

applicability of proviso to Section 6 of the Act would not be attracted in the case. According to Section 6 of the Hindu Succession Act, when a male Hindu dies after the commencement of Hindu Succession Act, 1956, having at the time of his death an interest in a *Mitakshara* coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the Act. As per proviso to the aforesaid Section, if the deceased had left him surviving a female relative specified in clause (1) of the Schedule or a male relative specified in that clause, who claims through such female relative, the interest of the deceased in the *Mitakshara* coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under the Act and not by survivorship. The interest of the Hindu Mitakshara coparcener shall be deemed to be a share in the property that would have been allotted to him if the partition of the property had taken place immediately before his death irrespective of whether he was entitled to claim partition or not. The aforesaid explanation points out notional share of Hindu *Mitakshara* coparcener before his death. The proviso would not be construed as enabling a person, who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on

intestacy a share in the interest

[15]. As per Hindu Succession (Amendment) Act, 2005 where a Hindu dies after the commencement of the Act, his interest of the property of a joint Hindu family shall devolve by testamentary or intestate succession and not by survivorship and the coparcenary property shall be deemed to have been divided as if the partition had taken place.

[16]. Admittedly, Pritam Singh had died on 29.02.2004. The Hindu Succession (Amendment) Act 2005 is not attracted to the facts of the present case. The proposition of the ratio laid down in **Prakash and others's** case (supra) has also been reiterated by the Hon'ble Apex Court in a subsequent judgment rendered in **Danamma @ Suman Surpur and another vs. Amar and other, 2018(1) R.C.R. (Civil) 863**. Plaintiff has specifically pleaded in the amended plaint of para Nos.1 and 2 that the property is ancestral coparcenary joint Hindu family property. The effort to wriggle out of the same by way of seeking deletion was negated by the Court vide order dated 20.11.2017 which has attained finality.

[17]. In view of pleadings of the plaintiff herself, the entitlement of the plaintiff was contingent upon applicability of Amendment Act of 2005. Since the aforesaid Act is prospective

in nature as Pritam Singh died prior to commencement of the Act, therefore, the estate of Pritam Singh would devolve upon male coparceners by way of survivorship leaving no scope for the plaintiff to inherit the same on the basis of her being a coparcener in the property. The ratio of precedents cited by learned counsel for respondent No.1 has no application in view of law laid down in **Prakash and others'** case (supra) which was again reiterated by the Hon'ble Apex Court in **Danamma @ Suman Surpur and another's** case (supra).

[18]. Since the judgment rendered by the Hon'ble Apex Court is law of the land, therefore, I deem it appropriate to set aside the impugned order dated 06.02.2018 passed by the Civil Judge (Jr. Divn.) Batala and accept this revision petition, thereby allowing the application under Order 7 Rule 11 CPC. Normal consequences to follow.

February 11, 2019

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No