

**RSA-2625-1987 (O&M) AND
XOBJC-4-C-1988 AND
COCP-1189-2007**

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

Date of decision : 25.01.2019

1.

**RSA-2625-1987 (O&M) AND
XOBJC-4-C-1988**

Jagir Kaur (D) through LRs and another

... Appellants

Versus

Arjan Singh (D) through LRs and others

... Respondents

2.

COCP-1189-2007

Gurmit Singh

... Petitioner

Versus

Sarwan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Sidhu, Advocate
for appellant No.1 in RSA-2625-1987 and
for the petitioner in COCP-1189-2007.

Mr. Rakesh Chopra, Advocate for respondent Nos.1 to 3.

AMIT RAWAL, J.

This order of mine shall dispose of one regular second appeal at the instance of the plaintiffs, against the judgments and decrees of the Courts below, whereby their suit has been decreed in part and cross-objections, at the instance of the defendants against dismissal of the cross-objection as well as the contempt petition filed for violation of the order dated 04.05.190.

The plaintiffs Gurmit Singh and Jangir Kaur, son and widow of Bija Singh, claimed joint possession as owners of 7/30 shares in respect of the following land:-

A- Khasra Nos.635 (5-17), 631 min (2-15), 632 min (6-0),

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633 min (5-13), 635 min (3-3), 637 (6-17), 631 min (4-0), 632 min (1-16), 633 min (2-0), 636 min (3-3), 646 (5-6), 645 min (2-5), 642 min (2-15), 11/2/2 (3-11),

B- Khasra No.729/1 (0-3), 810 (0-16),

C- Khasra Nos.170 min/1(1-8),

D- 645 min (4-0), 642 Min (3-10),

situated in revenue estate of Kalaur.

E- Land Killa No.17/2(2-17), 18/2 (6-0), 19/2 (1-4), 22/3 (0-5), 23/1 (1-7), 24/1 (0-7), of rectangle No.6 measuring 12 kanals situated in revenue estate of village Sadikpur Tehsil Sirhind as the decree in Suit No.226 of 2.6.1980 decided on 12.06.1980 Arjan Singh-Mehar Singh-Sarwan Singh of Village Kalaur Vs Puran Singh son of Sunder Singh of Village Kalaur is void and ineffective against the plaintiffs right in suit land.

F- Land Khasra No.14/2 (0-13), 15/2 (0-15), 11/1/1 (2-12), 11/2/1/3 (2-1), 12/2/2/1/2 (4-8), 13/1/2 (1-4), situated in village Kalaur, Tehsil Sirhind.

It was alleged that Puran Singh, grandfather of plaintiff No.1, had four sons, namely, Arjan Singh, Mehar Singh, Sarwan Singh, Bija Singh. He was having a land measuring 65 bighas 3 biswas. The land at the hands of Puran Singh was ancestral and therefore, the plaintiffs being son of Bija Singh, had the right by birth. The alleged decree dated 12.06.1980, suffered by Puran Singh in favour of Arjan Singh, Mehar Singh and Sarwan Singh excluding his father Bija Singh, was null and void, much less, not sustainable in the eyes of law.

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The defendants opposed the suit and denied the nature and character of the property as coparcenary. It was alleged that the parties were Jat agriculturists and governed by customary law of Punjab. At the time of death of Bija Singh, he was separated from his father Puran Singh. The property mentioned in letter 'F' alleged to have been purchased from the income of the land was emphatically denied. The factum of decree was not disputed.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether the suit property is coparcenary property qua the plaintiffs? OPP*
- 2. Whether the decree dated 12.06.1980 is ineffective qua the rights of the plaintiffs? OPP*
- 3. Whether the plaintiffs are entitled to the joint possession as prayed for? OPP*
- 4. Relief.*

During the pendency of the trial, counsel representing the plaintiffs suffered a statement that out of land measuring of 65 bighas 3 biswas situated in Village Kallaur, 22 bighas 10½ biswas was ancestral under customs and rest of the suit land 42 bighas 12½ biswas was non-ancestral, whereas the land situated in Village Sadakpur was also not ancestral. The defendants also propounded the Will dated 29.12.1980.

On the basis of the preponderance of oral and documentary evidence, the trial Court held the decree to be ineffective and the plaintiffs were held to be in joint possession of 1/5th share in respect of land measuring 22 bighas 10½ biswas i.e. 4 bighas 10 biswas. Since both the

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parties were aggrieved, the plaintiffs filed Civil Appeal No.76 of 1986, whereas the contesting defendants filed cross appeal. The lower Appellate Court dismissed the cross-objections and partly accepted the appeal and conferred $\frac{1}{4}$ th share of land measuring 20 bighas 10 $\frac{1}{2}$ biswas instead of $\frac{1}{5}$ th share in 20 bighas 10 $\frac{1}{2}$ biswas of land. It is, in these circumstances, the appeal as well as cross-objections have been filed before this Court.

Learned counsel for the appellants submitted that the property at the hands of Puran Singh was ancestral. He could not have suffered a collusive decree or Will except for legal necessity. The jamabandis established that Puran Singh had inherited from his father. The lawyer did not have any authority to suffer a statement by taking away the inherent right of the plaintiffs confining to relief of 20 bighas 10 $\frac{1}{2}$ biswas. The plaintiffs were entitled to an equal right in the entire land measuring 65 bighas 3 biswas. The lower Appellate Court erroneously held that the appellants are only entitled to $\frac{1}{4}$ th share of land measuring 20 bighas 10 $\frac{1}{2}$ biswas as it was not disputed by the counsel. The fact of notional partition has not been taken into consideration. No issue with regard to the Will was framed. The lower Appellate Court fallaciously relied upon the testimony of DW1, DW2 and DW3 as during the validity of the decree, there was no Will. The whole revenue record reflected that the property at the hands of Puran Singh was ancestral, thus, the statement made by the counsel was without authority.

Learned counsel for the respondents and cross-objectors submitted that the Will has been proved in terms of the provisions of

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Section 68 of the Indian Evidence Act and Section 63 (c) of the Indian Succession Act. The parties were governed by the customary law and as per the customs, Puran Singh was owner of the entire property subject to the restrictions of alienation. While partly decreeing of the suit, the Court below has not taken into consideration the fact that there was no provision in the Hindu Succession Act to bring about the transformation of the land inherited under the customary law. In this regard, cross-objections were filed before the lower Appellate Court, which had not been adjudicated in correct perspective. The provisions of Sections 6 and 7 of the Punjab Customs Act, 1972, have not been looked into in correct perspective.

I have heard learned counsel for the parties, appraised the paper book as well as the records of the Courts below and the view that the following "Substantial Questions of Law" arise for determination:-

- 1. Whether the statement suffered by the lawyer in respect of land measuring 22 bighas 10 1/2 biswas can confer the nature and character of the property as ancestral.*
- 2. Whether inheritance of estate of Thakari by the defendants was ancestral or not?*
- 3. Whether the registered Will dated 29.12.2000 executed by Puran Singh was without legal necessity or not?*

In view of the fact that the statement was suffered by the counsel before the trial Court with regard to the nature and character of the property measuring 22 bighas 10 ½ biswas as ancestral, it is, in these circumstances, the trial Court conferred 1/5th share in respect of land measuring 22 bighas 10 ½ biswas i.e. 4 bighas 10 biswas, but the lower Appellate Court conferred 1/4th share instead of 1/5th share. The finding of

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the lower Appellate Court in conferring 1/4th share is on account of fact that Puran Singh, grandfather of the plaintiffs, had four sons, Arjan Singh, Mehar Singh, Sarwan Singh, Bija Singh and widow Jangir Kaur, whereas the plaintiffs were the widow and children of Bija Singh, whereas the respondents being brothers. As regards the stake of the plaintiffs with regard to the land mutated in favour of the defendants qua estate of Thakari as well as the land situated in Village Sadikpur, it has been proved on record, vide sale deed that it was a self-acquired property as no evidence has been led that the property, aforementioned, was purchased by Puran Singh from the joint funds of coparcenary property. The Will had already been upheld by the Courts below on the premise that it had been proved through the testimony of witnesses and was in consonance with the decree dated 12.06.1980. Viz-a-viz the other parcel of land, once held to be non-ancestral, it can be willed away as the question of legal necessity would not arise.

Reliance by Mr. Sidhu, with regard to the pedigree table staking the claim with regard to the estate of Thakari, in my view, is wholly preposterous, for, all the sons of Puran Singh, were collateral of Thakari and they would have preferential right to inherit the property instead of their children. The pedigree table would not be only basis for determination of the character and nature of the property, but Revenue Excerpt, which has not seen the light of day. In other words, assertion of the plaintiffs claiming right in the property by birth, was based upon the surmises and conjectures and far fetched dream as no evidence had been led in that regard.

Keeping in view the aforementioned facts, the substantial

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question No.1 and 3 are answered in favour of the appellants-plaintiffs and against the respondents-defendants, whereas substantial question No.2 is answered in favour of the defendants/respondents and against the appellants-plaintiffs. Resultantly, the regular second appeal as well as the cross-objections are dismissed.

As regards the contempt petition, no cause of action survives in the contempt petition as the main appeal has been decided. Accordingly, the same is disposed of as having been rendered infructuous.

25.01.2019
Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**