

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

**RSA No.3438 of 1987 (O&M)
Date of decision:02.04.2019**

Murari Lal

... Appellant

Vs.

Dharmander (deceased) through LRs and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. C.B.Goel, Advocate, for the appellant.

Mr. Sumit Sangwan, Advocate, for the respondents.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed at the instance of the appellant-defendant who was not successful in defending the suit decreed by the trial Court and affirmed in appeal.

The plaintiff instituted the suit for declaration by challenging the sale deed dated 21.09.1979 in respect of land measuring 20 kanals 2 marlas executed by defendant no.2 (Mange Ram, his father) in favour of defendant no.1 Murari Lal as he had right by birth in the property being ancestral with consequential relief of co-parcener. It was alleged that plaintiff in the year 1979 had filed a suit for permanent injunction and as per the judgment and decree dated 18.08.1981, nature of the property was found to be ancestral. The cause of action accrued to challenge the sale deed only when defendant no.2 sold some portion of land.

Defendant no.2 was proceeded against ex parte. Defendant no.1 opposed the suit and claimed himself to be bonafide purchaser for a

valuable consideration. It was asserted that sale was effected during the pendency of the previous suit, therefore, the suit was not maintainable.

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

- “1. Whether plaintiff is the son of defendant no.2 Mange Ram and constitutes a Joint Hindu Family with him?OPP*
- 2. Whether the suit land was joint Hingu family property of defendant no.2 Mange Ram in the hands of latter?OPP*
- 3. Whether the sale deed dated 21.9.1979 was for consideration, legal necessity and is an act of good management?OPD*
- 4. Whether defendant no.1 is a bona fide purchaser?OPD*
- 5. Whether the suit is not maintainable in the present form?OPD*
- 6. Whether the suit is collusive and at the instance of defendant no.2?OPD*
- 7. Whether the suit is false and frivolous and defendant no.1 is entitled for special costs?OPD*
- 8. Relief.”*

The plaintiff in support of the case examined four witnesses and brought on record Ex.P1 to Ex.P18, whereas defendants examined four witness.

In rebuttal, plaintiff examined PW5 and brought on record many other documents.

Mr. C.B.Goel, learned counsel appearing on behalf of the appellant submitted that judgment and decree of the Courts below on issue no.1 is liable to be set aside as there is no evidence on record to establish that plaintiff was the son of Mange Ram and constitute the Joint Hindu Family. The judgment of the Criminal Court was not admissible in evidence. The parties were joint and governed by the customs. Five daughters of Digh Ram could not have inherited his land alongwith sons on his death, therefore, the property cannot be said to be ancestral but separate property. The sale was for legal necessity as Mange Ram was in dire need of money owing to his father's previous debts and as well as to meet the litigation expenses which has been established on record through documentary evidence i.e. Ex.D1, Ex.D2, Ex.D5, Ex.D6, Ex.D8 to Ex.D10, Ex. D12 to Ex.D17, Ex.D18 and Ex.D31. The appellant is the bonafide purchaser and sale deed could not have been set aside in view of the provisions of Section 52 of Transfer of Property Act. The plaintiff failed to place on record any material i.e. pedigree table and the revenue excerpt to establish the nature and character of the suit property. Mere admission in which the appellant-defendant was not a party cannot cloth the status of the suit property as ancestral.

Per contra, Mr. Sumit Sangwan, learned counsel appearing on behalf of the respondents submitted that judgments and decrees of the Courts below do not suffer from any illegality and perversity. The previous judgment and decree dated 18.08.1981, Ex.P10 has not been set aside, therefore, the nature of the property was ancestral. The legal necessity as

admitted to be propounded in fact is a ploy as the aforementioned evidence was totally opposite to the one as led in the previous suit.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that the following Substantial Question of Law arises for adjudication of the present appeal:-

- “1. Whether the property at the hands of Mange Ram-defendant no.2 was ancestral?
2. Whether the findings of law qua property being ancestral in previous suit, could be rendered different?”

This Court while issuing notice of motion on 16.11.1987 passed the following order:-

“Notice of motion for 7.12.1987.

No stay is required as the suit had been decreed only for declaration and possession cannot be taken in execution thereof.”

From the perusal of the aforementioned, it is evident that there was no interim stay. In civil suit no.407 of 1979 titled as Dharmander minor son of Mange Ram vs. Mange Ram (Ex.P-10) following issues were framed:-

- “1. Whether the plaintiff constitutes a joint Hindu family with the defendant and he has locus standi to file the suit?OPP
2. Whether the suit property is joint Hindu family property of the plaintiff and the defendant?OPP

3. Whether the defendant is alienating the suit property without legal necessity?OPP
4. Whether the suit is false and frivolous as alleged in additional objection no.4 of the written statement and if so to what effect?OPD
5. Relief.”

The trial Court on issue no.2 after noticing the evidence on record rendered the following findings:-

“The plaintiff has alleged that the suit land is joint Hindu family property of the plaintiff and the defendant. Ex.P10 is the copy of jamabandi for the year 1970-71 pertaining to khewat no.89, khatauni no.120 and Ex.P11 is copy of the jamabandi for the year 1970-71 pertaining to khewat no.90. In both of those jamabandi Digh Ram so of Ram Dayal has been recorded as co-owner in that land. Said Digh Ram died and his mutation of succession was entered in favour of defendant Mange Ram, his brothers, sisters and mother. In that mutation no.800, copy of which Ex.P7, there is reference to khewat nos.89 and 90, Ex.P3 and Ex.P6 are the copies of jamabandi for the year 1975-76 and therein name of defendant alongwith others figures as owner. It is true that in these two documents reference to old khewats no.89 and 90 has not been given but it appears that patwari did not mention the old khewat numbers through oversight. Any how, that does not make any difference

because ownership of the land which was subject matter of these two jamabandis devolved upon the defendant and others on the basis of mutation no.800 reference to which has already been made. So land in the jamabandi for the year 1975-76 stands connected with the land mentioned in the jamabandi for the year 1970-71. In this way, it is clear that suit land came from Digh Ram son of Ram Dayal who was father of defendant and grandfather of plaintiff but one thing more remains to be considered before the entire suit land is held to be ancestral or joint Hindu family property of the parties and that question is as to whether the land which devolved upon sisters and mother of the defendant and later on came to defendant and his brother Chander remained joint Hindu family property or that part of land coming to the defendant because his self-acquired property. In paragraph no.223(4) at page no.246 of Principles of Hindu Law by Sir D.F.Mulla (tenth edition) it has been mentioned that the share which a co parcener obtains on partition of ancestral property is ancestral property as regards his male issues. It has been specifically made clear in that paragraph that such share is ancestral property only as regards his his male issues. The defendant and his brother Chander instituted suit no.316 of 1976 against their sisters and mother alleging joint Hindu family and the land of khewat no.90 and 89 to be joint Hindu family property. They claimed

ownership of share of those ladies on the found that land had fallen to the share of Mange Ram and Chander in family agreement. When the defendant himself alleged the suit land to be joint Hindu family property and a family arrangement on the basis of which he claimed some right and he succeeded in getting the relief. I find no reason not to rely upon that admission of the defendant. Copy of plaintiff in that suit is Ex.P16 and copy of judgment is Ex.P15. Since the defendant himself pleaded the suit land to be joint Hindu family property and to have got some part of it in family partition so there should be no hesitation in holding that the entire land in the hands of defendant whether coming from his father or from his sisters and mother partition is ancestral and joint Hindu family property qua the plaintiff. So issue no.2 is also decided in favour of the plaintiff and against the defendant.”

The aforementioned findings were binding upon defendant no.2. The aforesaid arguments are not sustainable as pith and substance of the findings in the previous suit was something else as it was stated that property was inherited from Digh Ram. The persons cannot be permitted to blow hot and cold .

The findings of facts and law cannot be said to be suffering from illegality and perversity. The substantial questions of law above are answered in favour of the respondents and against the appellant.

Resultantly the regular second appeal is dismissed.

April 02, 2019

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No