

RSA Nos.1730 & 2224 of 1988 (O&M)

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

Date of decision : 06.03.2019

1. RSA-1730-1988 (O&M)

Harchand and others

... Appellants

Versus

Gurdev Singh (deceased) through LR's and others

... Respondents

2. RSA-2224-1988 (O&M)

Gurdev Singh (deceased) through LR's

... Appellant

Versus

Harchand Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. O.P. Goyal, Senior Advocate with
Mr. Piyush Aggarwal, Advocate
for the appellants in RSA-2224-1988 and
for the respondents in RSA-1730-1988.

Mr. R.S. Randhawa, Advocate
for the appellants in RSA-1730-1988 and
for the respondents in RSA-2224-1988.

Mr. Dushyant Sarvesh, Advocate
for respondent No.15 in RSA-2224-1988 and
for respondent No.10 in RSA-1730-1988.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two regular second appeals,
aforementioned, at the instance of the plaintiff and defendant Nos.9 to 14,
arising out of the Civil Suit No.6/5 of 1983.

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The plaintiff-Gurdev Singh son of Jagir Singh, instituted the suit for possession in respect of the following parcels of land:

a) measuring 68 kanals 10 marlas comprised in Khewat No.198, Khatauni No.224 Khasra No.267,, 623, 700 Rect. No.30 Qilla No.27, 11, 20, 21 Rect. No.35 Qilla Nos.1, 8/1, 9/1, Rect. No.31, Qilla No.25/2, Rect. No.34, Qilla No.5/3, Rect. No.40, Qilla No.1/2, 9/3, 10/11/2, 12/1, 13/1, 14/1, 20/1, 21/1,

b) measuring 1 kanal 6 marlas comprised in Khasra No.297 entered in jamabandi for 1970-80 situated at village Narangwal H.B. No.306, the. And Distt. Ludhiana,

to be coparcenary property and by challenging the sales effected by power of attorney holder Mohinder Kaur, in favour of defendant Nos.9 to 15 and consequent mutation, to be void, ineffective. The plaintiff asserted that Hira Singh had one son Jagir Singh, who was married to Bishan Kaur. Jagir Singh had two sons i.e. Gurdev Singh, plaintiff, Gurdial Singh, who died in the year 1969 and one daughter Gurdial Kaur. The other son Gurdial Singh was married to Mohinder Kaur. Mohinder Kaur on the basis of the power of attorney executed by Jagir Singh, sold the land to defendant Nos.9 to 14. It was a coparcenary property and therefore, he being 4th (fourth) generation in lineage had a right by birth.

Defendant Nos.1, 2 and 6, opposed the suit, but did not deny of the death of Hira Singh about sixty years back. The nature and character of the property as coparcenary was empathetically denied. Gurdial Singh, at the time of death, was living separately from Gurdev Singh and Jagir Singh and his sister. The sale deeds were effected for a valuable consideration and legal necessity.

Defendant Nos.9 to 14 contested the suit claiming themselves

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to be *bona fide* purchaser for a valuable consideration and after verification of the revenue record. It was also explained that the alienations were an act of good management by Jagir Singh as the land, in dispute, was situated in Village Narangwal, whereas Jagir Singh and other defendant Nos.1 to 8 were residing in Village Jamalpur, where they were separately cultivating the land. The suit land was not fit for cultivation. It was the defendants, who did hard work and make land more cultivable.

On receipt of the replication, the trial Court framed the following issues:-

- 1. Whether the suit property is Joint Hindu Family property of the plaintiff and defendants No.1 to 3? OPP*
- 2. Whether the sales of the suit property effected by Jagir Singh through his general attorney Smt. Mohinder Kaur are void ineffective and inoperative and not binding on the plaintiff? OPP*
- 3. Whether the mutations No.4539, 4537, 4538 and 4368 in respect of the suit property are void, in effective and inoperative OPP*
- 4. If issue No.1 is proved, whether the sales effected by Jagir Singh through his general attorney Mohinder Kaur of the property were for legal necessity/ OPPs (9to 15).*
- 5. Whether the plaintiff has no locus standi to file the present suit? OPDs*
- 6. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPDs (9 to 14).*
- 7. Whether the defts No.1 to 8 are governed by agricultural customs in matters of alienation, if so its effect/ OPDs (9-14).*
- 8. Whether the suit is not within time? OPD 15*
- 9. Whether the suit is not maintainable in the present form? OPD 15*

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10. Whether the suit is bad for non-joinder of necessary parties/

OPOD 15

11. Whether the plaintiff is entitled to the possession of the suit

land? OPP

12. Relief.

The plaintiff in support of the aforementioned pleadings examined two witness and brought on record various documents including revenue excerpt, whereas the defendants examined eight witnesses and tendered in evidence many documents.

On the basis of the evidence brought on record, the trial Court partly decreed the suit and held that property measuring 1 kanal 6 marlas and half share in 68 kanals 10 marlas, at the hands of Jagir Singh as ancestral. The sale was held to be void and other half share of land measuring 68 kanals 10 marlas was held to be self acquired property of Jagir Singh.

Since both the parties were affected, two appeals were filed before the lower Appellate Court and the same have been dismissed.

Mr. O.P. Goyal, learned Senior Counsel assisted by Mr. Piyush Aggarwal, learned counsel appearing on behalf of the appellants in RSA-2224-1988 and for the respondents in RSA-1730-1988, in support of the memorandum of appeal, submitted that there is no evidence on record to establish that Jagir Singh had acquired the land from Dasondhi, his brother, in fact, the pedigree table placed on record had gone un-rebutted, in such circumstances, the Courts below ought to have decreed the suit *in toto*. Even if, the particulars of the excerpt were not known, the other half share acquired by Jagir Singh qua the estate of Dasondhi, would also be ancestral, as Dasondhi was none-else, but his brother and derived the interest from the

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common ancestor, therefore, there is gross illegal and perversity. The defendants have also failed to prove on record any legal necessity. As per item No.2 of excerpt, the property of Basawa Singh was inherited and devolved upon the adopted son Hira Singh. Hira Singh's estate was inherited by his sons Dasondhi and Jagir Singh in equal sons.

Per contra, Mr. R.S. Randhawa, learned counsel appearing on behalf of the appellants in RSA-1730-1988 and for the respondents in RSA-2224-1988, submitted that the sale deed executed by Mohinder Kaur, on the basis of the GPA, was for the benefit of coparcenary i.e. Jagir Singh being '*Karta*', for, it has already been brought on record that Jagir Singh was resident of Canada, whereas the land was situated in Narangwal, Ludhiana. The estate of Dasondhi was from a different branch, therefore, even if it was inherited by Jagir Singh, cannot acquire the status of ancestral or they can be permitted to put in common *hotch potch*, because, on demise of Dasondhi, it devolved upon Ajaib Singh and then Nand Kaur, his wife. After death of Nand Kaur, Jagir Singh, inherited being collateral. Since the other half share of 68 kanals 10 marlas was for legal necessity, the sale could not be set aside. The plaintiffs miserably failed to prove that the receipt of sale consideration was utilized for the welfare of the family. The sale deeds were of valuable consideration, as noticed by the Courts below, i.e. as per the prevailing rate, thus, urges this Court for dismissal of the suit *in toto*.

It is a matter of record that defendant Nos.1 to 8 & 15 did not prefer any appeal before this Court, so the findings qua land measuring 1 kanal 6 marlas, against defendant No.15, attained finality.

I have heard learned counsel for the parties, appraised the paper

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book as well as records of the Courts below.

Before I could frame the substantial question of law, it is noticed that in RSA No.1730 of 1988, while admitting the appeal, vide order dated 15.07.1988, ad interim stay was granted, whereas the appeal bearing RSA No.2224 of 1988 was vide order dated 26.10.1988 ordered to be heard with RSA No.1730 of 1988. For the sake of brevity, the orders dated 15.07.1988 and 26.10.1988, read as under:-

"Order dated 15.07.1988 in RSA-1730-1988

Admitted.

Ad interim stay as prayed for.

Notice re: stay for 29-7-1988.

Order dated 26.10.1988 in RSA-2224-1988

Notice. To be heard with R.S.A. 1730 of 88."

The following 'Substantial Questions of Law' arise for determination:-

- 1. Whether the half share of 68 kanal 10 marlas acquired by Jagir Singh from different branch i.e. his brother Dasondhi would be ancestral?*
- 2. Whether the impugned sales executed by Mohinder Kaur being attorney on behalf of Jagir Singh as principal, in favour of defendant No.9 to 14, were of self-acquired property or otherwise i.e. from coparcenary and if so, for legal necessity?*
- 3. Whether the judgments and decrees of the Courts below suffer from illegality and perversity?*

On going through the contents of the plaint, pedigree table did not disclose that Hira Singh had two sons i.e. Jagir Singh and Dasondhi. The Courts below were made to believe that Jagir Singh had one son. It is from the revenue excerpt (Ex.P4) found that Dasondhi was the son of Hira

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Singh being adopted. Jagir Singh and Dasondhi had acquired the title in the suit property to the extent of half share. Dasondi had one son Ajaib Singh, who was married with Nand Kaur. Both of them died and in the absence of any further natural heir, his share devolved upon Jagir Singh. The question arises is that, had Nand Kaur been alive, as per provisions of sub-Section 1 of Section 14 of the Hindu Succession Act, 1956 (in short 'the 1956 Act') would have become absolute owner in the suit property or not. Section 15 of the 1956 Act envisages the general rules of succession, in case of female Hindu, which reads as under:-

" **15. General rules of succession in the case of female Hindus.—**

(1) *The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—*

(a) *firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*

(b) *secondly, upon the heirs of the husband;*

(c) *thirdly, upon the mother and father;*

(d) *fourthly, upon the heirs of the father; and*

(e) *lastly, upon the heirs of the mother.*

(2) Notwithstanding anything contained in sub-section (1),—

(a) *any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and*

(b) *any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs*

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referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

Jagir Singh was since real brother of Dasondhi and therefore, legal heir of Ajaib Singh, who was son of Dasondhi, in law, required to inherit the property as per the provisions of sub-Section (b) of Section 15 of the Hindu Succession Act. Half share of land measuring 68 kanals 10 marlas, in such circumstances, were inherited by Jagir Singh and not of the common ancestor to form share of Dasondhi. The revenue excerpt deciphered that nature and character of the property at the hands of Jagir Singh was ancestral as Gurdev Singh, his son, inherited the property from his three immediate ancestros i.e. 1. Basawa Singh, 2. Hira Singh 3. Jagir Singh. He being 4th (fourth) generation in lineage had a right by birth, though it has to be seen whether the sale of the entire land measuring 68 kanals 10 marlas by Mohinder Kaur being attorney holder of Jagir Singh, out of the entire coparcenary property including that of Dasondhi, had acquired the character of ancestral or only part of it and if in entirety, whether the sale was for legal necessity or not.

There would have been force in the arguments of Mr. Goyal, had Ajaib Singh and Dasondhi been alive. On demise of both males, land was acquired by her, in her individual capacity and the provisions of Section 15(b) of the 1956 Act would apply. It would no longer retain the character and nature as of coparcenary/ancestral, thus, in such circumstances, the findings of fact and law arrived at by the Courts below in setting aside the sale deed with regard to the half share out of land measuring 68 kanals 10 marlas, cannot be said to be suffering from illegality and perversity.

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As regards the arguments of Mr. Randhawa that in case, the half share was held to be joint, it was for legal necessity, I am of the view that no direct evidence or corroborative has been led on record to establish that the sale proceedings taken by the members, were for the good management of the ancestral property by placing on record some examples, as to whether some land was purchased for welfare of the coparcenary or otherwise. The recital in the sale deeds, in such circumstances, would not discharge the onus.

In view of what has been noticed above, the substantial questions of law, as framed above, are answered in the manner that the judgments and decrees of the Courts below do not suffer from illegality and perversity. There was no legal necessity. Half share of 68 kanals 10 marlas has rightly been held to be sold out of the coparcenary property with legal necessity and other half share to be self-acquired property, derived from Nand Kaur.

Resultantly, both the appeals are dismissed.

06.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**