

In the High Court of Punjab and Haryana at Chandigarh

RSA-387-1988 (O&M)

Date of Decision: March 01, 2019

Hari Kishan @ Gurdayal Singh (deceased) through his LRs.

... Appellant(s)

Versus

Kartara (deceased) through his LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Som Nath Saini, Advocate,
for the appellant(s).

Mr. Prateek Gupta, Advocate,
for the respondents.

Amit Rawal, J. (Oral)

The appellant-plaintiff has not been successful before both the Courts below in claiming declaration of ownership challenging the decree dated 17.01.1983 rendered in Suit No. 10 of 1983 in respect of the following land:-

“i) Land measuring 6 kanals 5-1/2 marlas i.e. ½ share of total land 12K-11M entered in Khewat No. 26/19, Khatoni No. 66, Khasra No. 544 (7-8), 547/2 (1-3), 550(4-0)

ii) Land measuring 17K-18M being ½ share of total land measuring 35K-16M entered in Khewat No. 91/79, Khatoni No. 178, Khasra No. 547/1(2-16), 861/3(1-16), 880 (7-0), 881 (8-8), 882 (8-0), 883(7-8),

iii) Land measuring 31 Kanals 16 Marlas i.e. ½ share of

total land 63K-12M entered in Khewat No. 119/106, Khatoni No. 220, Khasra No. 399 (0-10), 545 (7-8), 546 (7-8), 549 (4-0), 551(0-15), 552 (7-5), 753(8-0), 562(8-0), 563(4-18), 564(3-2), 565 (4-0), 901(3-13), 902 (4-13), Kittas 13,

iv) Land measuring 17K-19M being $\frac{1}{2}$ share of 35K-18M entered in Khewat No. 209/185, Khatoni No. 336, Khasra Nos. 862(6-12), 863(6-12), 864(6-16), 865(6-16), 866(7-4), 900 (1-18), Kittas 6,

all land situated at Village Kalyana No. 228, Tehsil Thanesar vide jamabandi 1979-80.”

Plaintiff no.1 is son of defendant no.1 – Kartara, whereas, plaintiff no.2 alleged wife of defendant no.1 - Kartara. Plaintiffs alleged that the property at the hands of Kartara is ancestral and there was no family settlement.

Defendants opposed the suit by denying that plaintiffs being the son and wife of defendant no.1. The property at the hands of Kartara was alleged to be self acquired, in such manner, locus standi was also challenged.

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

- “1. Whether the plaintiff no.1 and 2 is the son and wife of defendant no.1 respectively? OPP
2. Whether the impugned judgment and decree is illegal, null and void, inoperative, and in effective on the grounds mentioned in the plaint? OPP
3. Whether the land in suit is ancestral and Joint Hindu

Family Property and coparceners? OPP

4. *Whether the suit is not maintainable in the present form?
OPD*
5. *Whether defendant no.1 is married to defendant no.5 and
has children from defendant no.5? OPD*
6. *Whether the plaintiffs have no cause of action against the
defendants? OPD*
7. *Whether the suit is not property valued for purpose of
court fee and jurisdiction? OPD*
8. *Relief.”*

The plaintiffs in support of their pleadings, examined seven witnesses and tendered into evidence following documents:-

- | | |
|-------|--|
| Ex.P1 | Birth Certificate |
| Ex.P2 | Copy of judgment |
| Ex.P3 | Copy of decree sheet |
| Ex.P4 | Copy of Jamabandi for the year 1979-80 |
| Ex.P5 | Mutation |

Defendant Kartara Singh who was alive, had appeared and stated that Maro was sister-in-law of Bakhtawar and he has nothing to do with her and denied that plaintiff no.1 is to be his son. Defendants examined three witnesses and tendered into evidence documents Ex.D1 to Ex.D3.

The trial Court on the preponderance of evidence dismissed the suit. The appeal laid before the Lower Appellate Court also met with the same fate.

Mr. Som Nath Saini, learned counsel, appearing on behalf of the appellant, submitted that the judgments of the Courts below particularly of the Lower Appellate Court is not sustainable in the eyes of law as it failed to notice the additional evidence brought on record i.e. mutation

whereby the suit property was inherited by Kartara – defendant no.1 from his father Jiwana and jamabandi 1969-70 is the testimony of the same and in view of provisions of Hindu's Mulla Law, applicable to mitakshara family, property inherited from grandfather by father would be ancestral at the hands of the plaintiff. Learned counsel for the appellant further stated that Ex.D1 and D2 are the copy of the sale deeds propounded by the defendants and cannot be admissible in evidence.

Per contra, Mr. Prateek Gupta, learned counsel, appearing on behalf of the respondents, supported the impugned judgments and decrees, stated that plaintiffs miserable failed to discharge the onus or place on record the revenue excerpt to establish that the property at the hands of Kartara being ancestral in nature. No evidence has come on record providing that Ram Dia's property was inherited or devolved upon Jiwana or his brothers and sisters. In such circumstances, plaintiffs did not have any right. A person who is holding self acquired property can deal with the property in any manner. This has been done by Kartara during life time and denied the nature and character of the property being ancestral. Suit against living father was not maintainable.

I have heard learned counsel for the parties and perused the paper-book, records of the Courts below and of the view that following substantial question of law arise for determination:-

1. Whether the judgment and decree of both the Courts below suffers from illegality or perversity?
2. Whether the suit property at the hands of Kartara subject matter of the collusive decree ibid was ancestral or not?

The answer would be 'No' for simple reason that the plaintiff

miserably failed to discharge the onus in placing on record any corroborative revenue record to establish that Jiwana, grandfather of the plaintiff inherited the property from Ram Dia in order to establish the nature and character of property as ancestral and plaintiff being 4th generation in lineage. The additional evidence would also pale into signification as it is a mutation regarding the estate of Jiwana in favour of Kartara. Even if there was no defence of the defendants, onus already upon the plaintiff to establish the same. In the absence of the same, property at the hands of Kartara was deemed to be self acquired and the suit against the living father having self acquired property is not maintainable. Be that as it may, the best possible evidence which could have been brought on record were revenue excerpt. This is admissible evidence as per the High Court Rules and Orders acknowledged by this Court in ***Banta Singh and others vs. Phuman Singh and others, 1972 PLJ 275.***

As an upshot of my findings, the substantial questions of law, framed above, are answered against the appellant-plaintiff and in favour of the respondents-defendants. Resultantly, second appeal is dismissed.

March 01, 2019

vkd

**(Amit Rawal)
Judge**

Whether reasoned / speaking : Yes

Whether reportable : No