

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

RSA No.1922 of 1988 (O&M)

Date of Decision.01.05.2019

Brahma Nand (since deceased) through LRs

...Appellant

Vs

Sagli Ram (since deceased) through LRs and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.S. Khurana, Advocate
for the appellant.

Mr. G.S. Jaswal, Advocate
for respondent No.2.

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AMIT RAWAL J. (ORAL)

C.M. No.7445-C of 2008

Learned counsel for the appellant seeks permission to
withdraw the application for amendment of the plaint.

Ordered accordingly.

C.M. No.10372-C of 2017

In view of the decision taken in the main case, the present
application is dismissed.

Main Case

The present regular second appeal at the instance of the
plaintiff has arisen from partial decretal of the suit for declaration
whereby the plaintiff has been granted declaration of possession in
respect of land measuring 22 kanals with injunction restraining the
defendants from interfering into peaceful possession qua his share.

The plaintiff filed the suit for declaration and permanent
injunction assailing the sale deed dated 21.02.1983 executed by Sagli
Ram, defendant No.1 in favour of defendants No.4 to 6 i.e. children of

Satya Nand. According to the averments, Sagli Ram had three sons namely Brahma Nand, Satya Nand and Ravi Datt. Brahma Nand is the plaintiff. The suit land at the hands of Sagli Ram was a coparcenary property and therefore, he had share in the suit property. The sale was without any legal necessity. Defendant No.2 obtained the gift deed with regard to land measuring 19 kanals 18 marlas from defendant No.1 and in such process, he was given 22 kanals 19 marlas for cultivation and 22 kanals to defendant No.3. After obtaining shares of land, there was a family settlement in which it was acclaimed by Sagli Ram that there was partition giving $1/4^{\text{th}}$ share to all three sons by retaining $1/4^{\text{th}}$ share with him.

Defendants opposed the suit and denied the family settlement and nature of the property to be ancestral. It was stated to be a self-acquired property. Even claim was stated to be time barred. It was also alleged that the plaintiff during life time of Sagli Ram obtained sale deed dated 22.08.1974 for land measuring 9 kanals 18 marlas in favour of his minor sons.

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

- “1. Whether the plaintiff is estopped from filing the present suit by his acts and admissions? OPD*
- 2. Whether the plaintiff is in possession of the land in dispute and suit for declaration and injunction is maintainable? OPP*
- 3. Whether the suit is bad on account of multifariousness and joinder of different causes of action in one suit? OPD*
- 4. Whether the suit is properly valued for the purposes of court fee and jurisdiction? OPP*

5. *Whether the suit is within limitation? OPP*
6. *Whether the property in dispute is joint Hindu Family coparcenary property of plaintiff and defendants No.1 to 3? OPP*
7. *Whether there is any family settlement dated 22.2.1974? If so, its effect? OPP*
8. *Relief.”*

Issue No.6 was with regard to nature of the property as coparcenary.

Both the parties led extensive evidence.

The suit was partly decreed by the trial Court and the appeal preferred against the same was dismissed by the lower Appellate Court.

Mr. P.S. Khurana, learned counsel appearing on behalf of the appellants submitted that the total land of Sagli Ram was approximately 98 kanals 5 marlas. Defendants did not challenge the sale deed dated 22.08.1974 for 9 kanals 18 marlas and therefore, defendants have no right to assert as it was a self-acquired property of Sagli Ram. The family partition has been proved on record whereby Sagli Ram acknowledged retention of 1/4th share with him with distribution of 1/4th share to each son, thus, gift deed was in excess of share as not in tandem with the family settlement. The sale deed/gift deed did not reflect any legal necessity. Finding on issue No.6 qua nature of the suit property as ancestral was never assailed by the defendants and therefore, that finding has become final. Sagli Ram died during the pendency of the appeal and therefore, his 1/4th share was required to be devolved upon his three sons Brahma Nand, Satya Nand

and Ravi Datt in equal shares, thus, urges this Court for decretal of the suit qua granting him $\frac{1}{3}^{\text{rd}}$ share instead of $\frac{1}{4}^{\text{th}}$ share by setting aside the judgment and decree of the lower Appellate Court upholding the sale deed dated 21.02.1983 in favour of the defendants.

Per contra, Mr. G.S. Jaswal, learned counsel appearing for respondent No.2 submitted that the plaintiff had not approached the Court with clean hands as no evidence has been placed on record to establish that area of 9 kanals 18 marlas subject matter of sale deed dated 22.08.1974 was out of self-acquisition of Sagli Ram. In fact, the total land at the hands of Sagli Ram was about 98 kanals 5 marlas. The trial Court ought not to have accepted the sale deed as plaintiff miserably failed to prove that the sale deed was out of self-acquisition of Sagli Ram whereas sale deed dated 21.02.1983 in favour of defendants was out of legal necessity. He further submitted that in order to strike equities, the entire holding of Sagli Ram should be calculated and distributed in equal share i.e. $\frac{1}{3}^{\text{rd}}$ share amongst siblings i.e. Brahma Nand, Satya Nand and Ravi Datt or their legal representatives.

I have heard learned counsel for the parties, appraised the paper book, records of Courts below and of the view that following Substantial Questions of Law arise for determination by this Court.

(i) Whether the family settlement dated 22.02.1974, Ex.P1 whereby Sagli Ram had acknowledged the distribution of share to the extent of $\frac{1}{4}^{\text{th}}$ by retaining $\frac{1}{4}^{\text{th}}$ share has been misread and misinterpreted by the Courts below?

(ii) Whether the entire holding of Sagli Ram is to be

distributed equally amongst his three sons namely Brahma Nand, Satya Nand and Ravi Datt or his legal heirs in view of the fact the sale deeds dated 21.02.1983 and 22.08.1974 are in contravention with family settlement Ex.P1?

The revenue record Ex.P21 jamabandi reveals the total holding of Sagli Ram as approximately 98 kanals 5 marlas. Since there was no challenge to the finding on issue No.6, regarding nature and character of the property, the entire holding at hands of Sagli Ram was to be treated as ancestral. Plaintiff cannot be permitted to blow hot and cold at the same time to exclude apportionment of the share qua 9 kanals 18 marlas subject matter of sale deed dated 22.08.1974 as no evidence with regard to its character being self-acquired or otherwise has been brought on record. Defendants can always assail such finding by taking the aid of provisions of Order 41 Rule 33 CPC. Challenge of such finding in first appeal or second appeal is no longer *res integra*. Even the decree of the trial Court only amounts to apportioning of 1/4th share and not 1/3rd share, which is totally against the family settlement Ex.P1. In order to strike equities and prevent further litigation and to bring peace and harmony amongst the progeny/siblings or their successor-in-interest, both the sale deeds dated 21.02.1983 and 22.08.1974 and gift deed by wife of Ravi Datt qua 9 kanals 18 marlas would not be looked into and the entire property subject matter of two sale deeds and gift deed would be considered to be holding of Sagli Ram and its distribution as indicated above amongst the children.

In view of this, suit of the plaintiff is disposed of in light of the fact that all the three children of Sagli Ram would be entitled to

1/3rd share of estate of Sagli Ram as referred to above. The substantial questions of law are answered in the aforementioned manner. The appeal stands disposed of in above terms. Decree sheet be prepared accordingly.

(AMIT RAWAL)
JUDGE

May 01, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No