

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

RSA-111-1995(O&M)

Date of decision:-25.7.2019

Labh Singh

...Appellant

Versus

Amarjit Kaur @ Amar Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.V.K. Jain, Senior Advocate with
Mr.Ravi Kadian, Advocate
for the appellant.

Mr.P.S. Guliani, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Amarjit Kaur @ Amar Kaur wife of Sh.Chhajju Singh and daughter of Sh.Chuhar Singh son of Sh.Kishan Singh as well as her sister Ms.Jagrup Kaur wife of Sh.Kishori Lal had brought a suit against their three brothers i.e. S/Sh.Gurdial Singh, Sukhdev Singh and Labh Singh, all sons of Chuhar Singh, in which they impleaded their third sister Gurdial Kaur wife of Ranjit Singh daughter of Chuhar Singh as a proforma defendant, seeking a declaration that the plaintiffs along with proforma defendant No.4 are owners in joint possession to the extent of ½ share in the suit land and the house, subject matter of the

suit detailed in head-note of the plaint. As per their version, the suit property was previously owned by Sh.Chuhar Singh son of Sh.Kishan Singh, resident of village Ghagga, Tehsil Samana, District Patiala, who was father of the parties; that Sh.Chuhar Singh had died on 7.8.1988, however mutation regarding his estate was sanctioned in favour of the plaintiffs and defendants equally but thereafter defendants No.1 to 3 started claiming themselves to be sole owners of the suit property to the exclusion of the plaintiffs and defendant No.4. Feeling aggrieved the plaintiffs had brought the suit in question.

On being put to notice, defendants No.1 to 3 had appeared, whereas defendant No.4 did not appear despite service, as such she was proceeded against ex-parte. The defendants No.1 and 2 had initially appeared through counsel but subsequently they neither filed any written statement nor there was any representation on their behalf, as such, they were also proceeded against ex parte. The suit was contested by defendant No.3 only, who in the written statement filed by him, submitted that mutation entered and sanctioned was result of fraud and the same was illegal; that the land in suit was ancestral coparcenary property; that defendants No.1 to 3 had spent huge amounts on the marriages of the plaintiffs and defendant No.4 and it was settled that nothing would be paid to them out of ancestral property. The answering defendant raised legal objections that the

suit was not maintainable in the present form; that the suit was false, frivolous and vexatious to the knowledge of the plaintiffs; that the suit had been filed just to harass the defendant and was liable to be dismissed with special costs.

The plaintiffs had filed replication controverting the allegations in the written statement filed on behalf of defendant No.3 whereas reiterating the averments in the plaint.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 against defendant No.3 and in favour of the plaintiffs, issue No.2 against the defendant No.3 and in favour of the plaintiffs, issue No.3 against the plaintiffs and in favour of the defendant No.3, issue No.4 in favour of the plaintiffs and against defendant No.3, issue No.5 in favour of the defendant No.3 and against the plaintiffs, issue No.6 in favour of the plaintiffs and against defendant No.3. Resultantly, suit of the plaintiffs was dismissed with costs. This was so done vide judgment and decree dated 13.9.1990.

The plaintiffs were aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Patiala, which was assigned to Additional District Judge, Patiala, who vide judgment and decree dated 19.9.1994 accepted the appeal

by reversing findings on issues No.3 and 5; consequently the suit of the plaintiffs was decreed with costs.

Now it was turn of the defendant No.3 to feel dissatisfied and he had filed the present regular second appeal before this Court, notice thereof was given to the respondents.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the appeal.

The trial Court while deciding issue No.1 has come to the conclusion that the property in suit was not ancestral coparcenary property of defendants No.1 to 3, therefore issue was decided against defendant No.3 and in favour of plaintiffs. With regard to issue No.2, the trial Court found that it was not proved that any family settlement had taken place that the plaintiffs would not take any share in the ancestral property or during life time of Sh.Chuhar Singh the plaintiffs had been stating that they would not get any share in the said property of Sh./Chuhar Singh. This issue was decided against defendant No.3. Issue No.3 has been decided holding that in terms of Section 34 of Specific Relief Act, 1965 since it was proved that plaintiffs were not in possession of any part of the suit property and they being entitled to further relief of possession, which had not been claimed, therefore suit in the present form was not maintainable. That issue was decided in favour of defendant No.3 and against the plaintiffs. Issue No.4 had been decided in favour of the plaintiffs and

against defendant No.3 holding that plaintiffs being daughters of Sh.Chuhar Singh were his Class-I heirs under the schedule of Hindu Succession Act, 1956, therefore they had locus standi to bring the suit. Under issue No.5, it was observed that the suit had been filed by the plaintiffs in connivance with defendants No.1 and 2, whereas under issue No.6, it was observed that the property in dispute had not been proved to be ancestral property and it had been proved that there was no family settlement as alleged by defendant No.3 and defendant No.3 was not entitled to any special cost.

The trial Court had admitted almost entire case of the plaintiffs but dismissed the same simply for the reason that they had not asked for relief of possession and had simply sought a declaration. That verdict given by the trial Court was not justified since as concluded by it, the suit property earlier standing in the name of their father Sh.Chuhar Singh was not proved to be ancestral property, that means it was a self-acquired property. Since none of the parties is claiming that Sh.Chuhar Singh had executed any will in favour of anyone of them, which means the suit property is to go by natural succession. The parties to the suit being children of Sh.Chuhar Singh are entitled to inherit his properties in equal shares by natural succession; that after death of Sh.Chuhar Singh mutation is said to have been sanctioned in favour of the natural heirs of Sh.Chuhar Singh. The law is well settled that inheritance does not

remain in abeyance. After death of the last owner, his heirs immediately step into his shoes. Furthermore, in the eyes of law, the possession of one co-sharer is possession of all co-sharers unless ouster is proved. Here no such ouster of plaintiffs and defendant No.4 from the suit property comes out to be there. The trial Court was not justified in dismissing the suit of the plaintiffs simply for the reason that they had not sought consequential relief of possession/joint possession. However, learned Additional District Judge, Patiala rectified the wrong committed by the trial Court and accepted the appeal, in the process decreeing the suit filed by the plaintiffs.

Learned counsel for the appellant had referred to judgment *Ram Saran and another Versus Smt.Ganga Devi, 1972 AIR(SC) 2685* by the Apex Court wherein dealing with a case where the plaintiff brothers jointly owning suit property along with a widow, however after her death defendant claiming herself to be legal representative of the widow got mutation affected in her name in place of deceased. In the suit filed by plaintiffs, they had not sought possession of those properties but had claimed declaration for being owners of suit property. The said suit was not found to be maintainable. This judgment is not applicable to the case in hand due to different facts and circumstances and the context in which such observations had been made and further this aspect has already been

discussed in earlier part of the judgment.

Learned counsel for the respondents has referred to judgment **Jai Narain Versus Smt.Sona Devi, 2006(2) RCR(Civil) 212** by a Co-ordinate Bench of this Court wherein it was observed as under:

9. The other argument that no suit for declaration alone without relief of possession is competent would not require any detailed consideration because the plaintiff-respondent has been proved to be a co-sharer although not in possession of the suit land and, therefore, suit for declaration without seeking the relief of possession would be competent, as has been held by this Court in Amar Singh's case (supra) on which reliance has been rightly placed by the Trial Court. Therefore, I do not find any merit in the aforementioned argument.

I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Patiala.

No substantial question of law arises in this appeal.

The appeal stands dismissed accordingly.

25.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No
Whether reportable : Yes/No