

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

**RSA No.2931 of 1997(O&M)
Date of Decision:11.12.2019**

Hazara Singh through legal representatives

.....Appellants

Versus

Jujhar Singh and others

..... Respondents

And

RSA No. 3146 of 1997 (O&M)

Hazara Singh through legal representatives

.....Appellants

Versus

Jujhar Singh and others

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Arun Jain, Sr. Advocate
with Mr. Abhishek Dhull, Advocate
for the appellants.

Mr. Gurcharan Dass, Advocate
for the respondents.

LISA GILL, J.

R.S.A Nos. 2931 and 3146 of 1997, are taken up together for hearing and decision as both the appeals arise out of common judgement and decree dated 01.06.1994, passed by the learned Additional Senior Sub

Judge, Hoshiarpur, deciding the two civil suits filed by Hazara Singh. Both the appeals arising therefrom were also dismissed vide common judgement and decree dated 01.08.1997, passed by the learned Additional District Judge, Hoshiarpur.

Brief facts necessary for the adjudication of the case are that the plaintiff-appellant-Hazara Singh (now represented by his legal representatives) firstly filed a civil suit no. 48/ASSJ on 08.12.1988, titled as 'Hazara Singh Vs. Rattan Singh and others' seeking declaration to the effect that the land measuring 53 Kanals 08 Marlas, as detailed in the plaint, is joint Hindu family coparcenary property of the plaintiff and defendant no.1-Ranjit Singh (his father), defendants no.7 to 9 and sale deeds dated 25.02.1983 and 17.11.1986, executed by defendant no.1-Rattan Singh, are null, void and ineffective qua the rights of the plaintiff. Consequential relief of permanent injunction for restraining defendant-Rattan Singh from alienating the suit property and restraining the defendants from cutting the trees etc., on the land in dispute and dispossessing the plaintiff from the land measuring 10 Kanals 10 Marlas, was sought. It is pleaded that the plaintiff along with defendants no.1, 7 to 9, formed a joint hindu family and they are members of the coparcenary of which defendant-Rattan Singh, is the *karta*. The property in question is claimed to have been inherited from the ancestors. It is stated that the claim of defendants no. 2 to 5, to be the exclusive owners on the basis of abovementioned sale deeds, is illegal and incorrect. It is further pleaded that the plaintiff-Hazara Singh, was the son of the first wife of Rattan Singh. Most of the land was under mortgage, which has been redeemed by the plaintiff and he made substantial improvements

over the land in dispute. Number of trees were planted by him and the plaintiff claimed to be in actual possession of the land measuring 10 Kanals 10 Marlas as detailed in the plaint. When the defendants refused to admit their claim, the suit was filed.

Defendant-Rattan Singh, died during the pendency of the suit and defendant-Jujhar Singh, was substituted in place of defendant-Rattan Singh. All the defendants contested the suit. Various preliminary objections were taken in the written statement. It is denied that the land in dispute is joint Hindu family coparcenary property. The parties, it is claimed belong to the Changh agricultural tribe and are not governed by Hindu Law. Sale deeds are claimed to be valid and legal. It is stated that the earlier two suits filed by the plaintiff challenging sale deed dated 23.02.1983, were withdrawn by him. The present suit was thus hit by the principle of *res judicata*. Dismissal of the suit was accordingly prayed for.

Plaintiff-Hazara Singh subsequently filed civil suit no. 214 dated 27.09.1991, after the death of Rattan Singh, seeking a declaration to the effect that he was a co-owner of the property measuring 53 Kanals 08 Marlas to the extent of half share. Consequential relief as detailed therein, was also sought. It is again pleaded that the property was the joint hindu family property, with Rattan Singh @ Daulat Ram, as karta. Rattan Singh, it is stated had inherited the land in dispute from his forefathers. Will dated 30.01.1993, it is pleaded was executed by Rattan Singh in favour of the plaintiff and defendant-Jujhar Singh, bequeathing his entire property upon them in equal shares. Jujhar Singh, it is pleaded taking advantage of the old age of Rattan Singh, fabricated a will dated 10.09.1985, wherein the entire

property was allegedly bequeathed in his favour. Mutation was sanctioned in favour of Jujhar Singh on the basis of will dated 10.09.1985, in an illegal manner. Abovesaid, will, is stated to be illegal and not having any effect on the rights of the plaintiff-Hazara Singh. Possession of 10 Kanals 10 Marlas of land, is claimed to be with the plaintiff. It is further stated that possession of the plaintiff over the said land is also of a mortgagee as he had redeemed the land. Second suit was accordingly filed.

The said suit was contested by defendants no.1, 2 and 4, therein while defendant no.3 was proceeded *ex parte*. While denying the averments in the plaint, it is stated that the will dated 30.01.1993, earlier executed by Rattan Singh was duly cancelled and the subsequent will dated 10.09.1985 was executed in favour of Jujhar Singh. The said will dated 10.09.1985, is a registered will. Various other objections were raised therein. Dismissal of the suit was sought.

Replication was filed in both the cases by the plaintiff. From the pleadings of the parties, following issues were framed in Civil Suit no. 48/ASSJ/88 by the learned Sub Judge Ist Class:-

1. Whether the suit property is joint Hindi ancestral and coparcenary property qua the parties?
2. If issue no.1 is proved, whether the sale deeds dated 25.02.1983, 17.11.1986 in respect of the suit property are without legal necessity, without consideration and not binding on the plaintiff and defendants no.7 to 9?
3. Whether the plaintiff is in possession of the land in dispute?
4. Whether the plaintiff is entitled to the injunction prayed for?OPP
5. Relief.

The following additional issues were framed by the learned Senior Sub Judge, on 16.09.1992:-

1. Whether the plaintiff had paid costs of Rs.40/- as ordered in the previous suit vide order dated 03.12.1988 if not to what effect?OPP
2. Whether present suit is barred in respect of the sale deed dated 25.02.1983 and that whether the present suit has been filed for different cause of action?OPD
3. Whether suit is bad for misjoinder of causes of action and parties?OPD

The following issues were framed in Civil Suit no. 214/ASSJ/91 dated 27.09.1991 vide order dated 23.02.1994:-

1. Whether Rattan Singh executed a will dated 30.01.1973 in favour of the plaintiff and defendant no.1?OPP
2. Whether Rattan Singh deceased executed a will dated 10.09.1985 in favour of defendant no.1.?OPD
3. Whether the suit is not maintainable?OPD
4. Whether the suit is barred by time?OPD
5. Relief.

Both the suits were consolidated by the learned trial Court on 15.10.1992 and the parties led evidence in support of their respective claims/stands in civil suit no. 48/ASSJ/88 dated 08.12.1988.

Learned trial Court on considering the evidence on record, facts and circumstances of the case, held that the property in question could not be proved to be the joint Hindu ancestral coparcenary property in the hands of Rattan Singh. Therefore, he was entitled to alienate the property by way of the sale deeds. Claim of the plaintiff in respect to the sale deed dated 25.02.1983 was held to be time barred. It is further concluded by the learned trial Court that will dated 10.09.1985 was validly executed by Rattan Singh, bequeathing the entire property in favour of Jujhar Singh. Accordingly, both the suits filed by the plaintiff, were dismissed.

Appeals preferred by the plaintiff, were dismissed by the learned Additional District Judge, Hoshiarpur, vide impugned judgement and decree dated 01.08.1997.

Aggrieved therefrom, present appeals have been filed by the appellants.

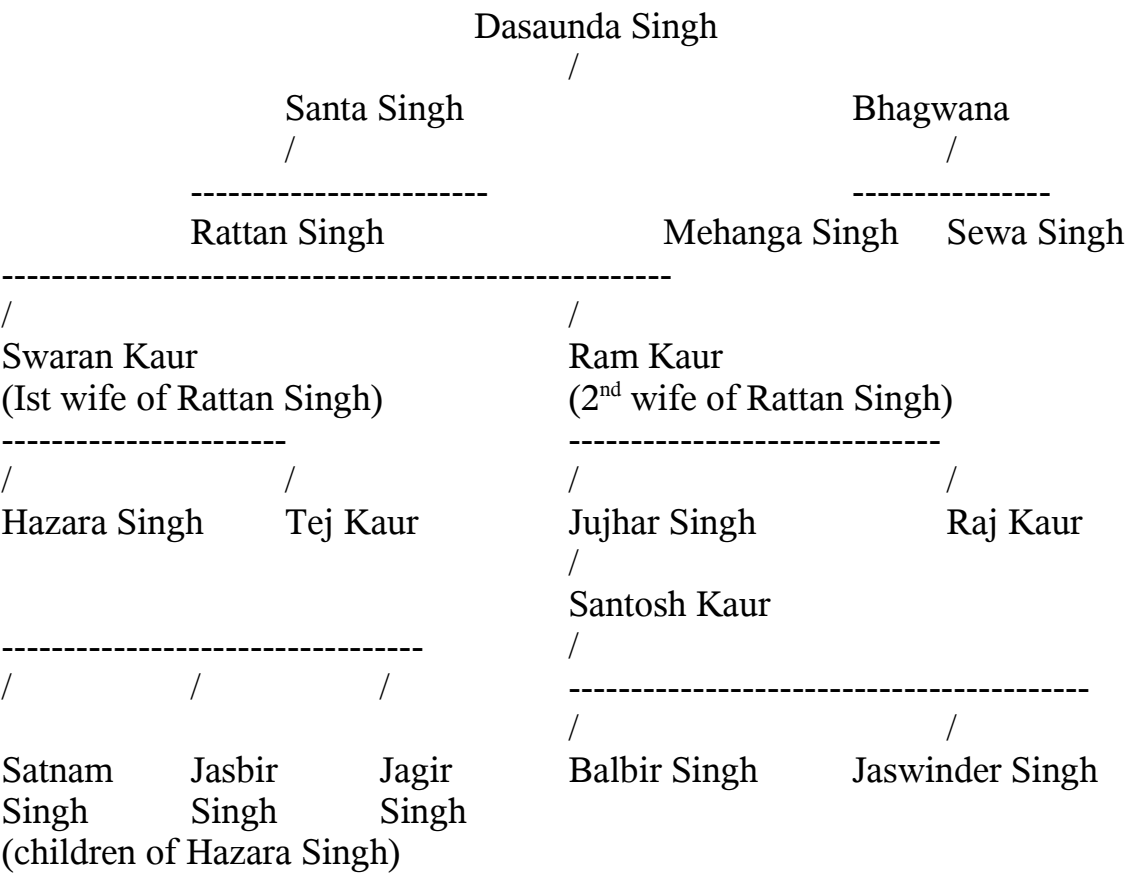
Learned counsel for the appellant vehemently argues that the ancestral coparcenary nature of the property is duly proved on the basis of the evidence on record. Documents Ex.P-4, Ex.P-7, Ex.P-9 and Ex.P-10, indicate the ancestral nature of the property. It is contended that the learned Courts below have wrongly concluded that as Rattan Singh, received the property from Dasaunda Singh, his grandfather and not from Santa Singh, ancestral nature of the property is not proved. This is so for the reason that the learned Courts below failed to notice that Santa Singh had predeceased his father-Dasaunda Singh. Therefore, the property had devolved from Dasaunda Singh to Rattan Singh. It is vehemently argued that Rattan Singh was under the influence of Jujhar Singh, therefore a forged and fabricated will dated 10.09.1985 was drawn up by Jujhar Singh. In-fact, Rattan Singh had earlier executed a will dated 30.01.1973 bequeathing his entire property in favour of Hazara Singh and Jujhar Singh in equal shares. Therefore, there was no occasion for executing a second will dated 10.09.1985. Learned counsel further argues that the entire problem started when Jujhar Singh retired from his service in the year 1983. It is the plaintiff, who had served his father Rattan Singh at all times. It is further contended that the witnesses of the sale deed as well as of the will dated 10.09.1985, Ex.D-3, are the same. This fact, in itself, shows the fraudulent nature of these instruments. It is further submitted that some of the Khasra numbers mentioned in both the sale deeds are the same, therefore the same are liable to be set aside, having no bearing on the rights of the appellant. It is thus prayed that the present

appeals be allowed, the impugned judgements and decrees be set aside. Consequently, the suits filed by the appellant be decreed throughout.

Learned counsel for the respondent while refuting the abovesaid arguments submits that both the learned Courts below have rendered well reasoned and logical judgements after proper appreciation of the evidence on record. It is submitted that two civil suits had earlier been filed by Hazara Singh challenging sale deed dated 22.02.1983. The same had been withdrawn and the present suit challenging the sale deed dated 22.02.1983 is barred by the principle of *res judicata* and furthermore has been correctly held to be time barred. Furthermore, the property in question is denied to be the joint hindu family property in the hands of Rattan Singh. It is submitted that the evidence on record does not indicate the same. Therefore, Rattan Singh was well within his rights to have alienated the suit property. Moreover, plaintiff-Hazara Singh, it is submitted had strained relations with their father-Rattan Singh. Plaintiff had physically abused Rattan Singh, as well. Rattan Singh was looked after and cared by Jujhar Singh. Will dated 10.09.1985, it is submitted was executed by Rattan Singh in his sound disposing mind. Will dated 10.09.1985, is a registered instrument and there is no evidence on record which indicates that this will is not genuine. It is thus prayed that the present appeals be dismissed and the judgements and decrees passed by the learned Courts below, be upheld.

I have heard learned counsel for the parties and have gone through the record, with their assistance.

At the very outset, it is useful to refer to the relationship between the parties, which is detailed as under:-



It is a settled position that unless proved to be so, a property cannot be presumed to be a joint Hindu family coparcenary property. Both the learned Courts below after considering the evidence on record i.e., Misal Bandobast for the year 1884, Ex.P-4 and that of the year 1911-12, Ex.P-5, Mutation, Ex.P-6, jamabandi for the year 1942-43, Ex.P-7, Misal Hakiat, Ex.P-8, Khatauni Ishtemal, Ex.P-11, pedigree table, Ex.P-14, concluded that the plaintiff had failed to prove the suit property to be ancestral in the hands of defendant-Rattan Singh. It is held that the plaintiff failed to prove that Rattan Singh, father of the plaintiff had inherited the suit land from the three lineal male descendents. It is observed that Rattan Singh, did not inherit the land from his father-Santa Singh, but from his grandfather-Dasaunda Singh. The date of death of Santa Singh, is not on record. Revenue record from the year 1911-12 and 1942-43 was not placed on record.

As per the pedigree table, Ex.P-14,, Santa and Bhagwana are

recorded to be the sons of Dasaunda Singh. Daulat Ram @ Rattan Singh, is the son of Santa, whereas Mehnga Singh and Sewa Singh, are recorded as the sons of Bhagwana. As per Misal Bandobast 1884, Ex.P-4, Dasaunda Singh, is recorded to be owner of suit land. Dasaunda Singh, died and the property devolved upon Bhagwana and Daulat Singh sons of Santa Singh in equal shares as per mutation, Ex.P-6, sanctioned on 24.04.1911. Consolidation took place in the year 1912 and new numbers were carved out. Consolidation also took place in the year 1958-59 on the basis of the jamabandi for the year 1942-43. None of the documents from the year 1911-12 to 1942-43, were placed on record. It is rightly concluded by both the Courts below that the evidence on record does not prove that the land as mentioned in the Jamabandi for the year 1940 to 1943, Ex.P7, was the one allotted in lieu of the land mentioned in the Jamabandi for the year 1911-1912. It is a settled position that the ancestral co-parcenary nature of the property has to be proved by the person asserting it to be so. It is relevant to note at this stage that the plaintiff himself has claimed that a Will dated 30.01.1973 had earlier been executed by Rattan Singh whereby the property was bequeathed to the plaintiff Hazara Singh and Jujhar Singh in equal shares. The finding of both the learned Courts below to the effect that the property in question, is not proved to be the joint Hindu family coparcenary property, is upheld.

In this view of the matter, Rattan Singh, was clearly entitled to have alienated the property by way of sale deeds and the said sale deeds, cannot be challenged on the ground that the alienation was without any legal necessity and consideration. It is a matter of record that the plaintiff had

earlier filed a suit challenging sale deed dated 25.02.1983, but the same was dismissed. An appeal was preferred by the plaintiff and he was permitted to withdraw the suit with permission to file a fresh suit on 22.10.1986, Ex.D-5. Another civil suit no. 461 of 1986, was filed in respect to the sale deed dated 25.02.1983 and sale deed dated 27.11.1986. The said suit was also withdrawn with liberty to file a fresh suit on the same cause of action. Thereafter, the present suit i.e., Civil Suit no. 48/ASSJ was filed on 08.12.1988. Both the learned Courts below have correctly held that the suit is barred in respect to the sale deed dated 25.02.1983, Ex.D-1.

At this juncture, it is relevant to note that the plaintiff himself pleaded that a will dated 30.01.1973, had been executed in respect to the property in question in his favour as well as of the defendant-Jujhar Singh, whereby the property had been bequeathed upon them in equal shares. This fact in itself, indicates that the property in question, is not ancestral joint Hindu family property. The said will dated 30.01.1983, is duly admitted by the defendants. However, it is a matter of record that a subsequent registered will dated 10.09.1985 was executed by Rattan Singh, in favour of the defendant-Jujhar Singh.

I have perused the said will dated 17.11.1986, Ex.D-3. It is specifically mentioned therein that Rattan Singh had earlier executed a will dated 30.01.1973, in favour of both his sons namely Rattan Singh and Hazara Singh. It is further stated that after execution of the said will, the attitude and behaviour of the plaintiff-Hazara Singh had changed and Hazara Singh misbehaved with him and physically abused Rattan Singh as well. It is mentioned therein that litigation including criminal, ensued between the

parties. It is further stated therein that Jujhar Singh was looking after his needs and requirements. Therefore, the entire property was being bequeathed upon Jujhar Singh. There is a specific recital in the will dated 17.11.1986, Ex.D-3, that the earlier will 30.01.1973, was being cancelled by the testator. In order to prove the will, defendant has examined Khushi Ram, deed writer, Sita Ram and Swaran Singh, the attesting witnesses. I do not find any merit in the argument raised by learned counsel for the appellant that as the attesting witnesses of the will as well as the sale deeds are the same, the said documents are forged and fabricated. In the absence of any positive evidence to this effect, the documents cannot be held to be fraudulent only on this ground.

It is to be noted that Rattan Singh, remained alive for a number of years after the execution of the sale deeds and he never challenged the same. Rattan Singh was admittedly a party to both the civil suits filed by the plaintiff challenging the sale deed dated 25.02.1983.

Initiation of litigation by Hazara Singh, mentioned in the will, is corroborated by the evidence on record. There is no merit in the argument raised by learned counsel for the appellant that as the evidence regarding criminal proceedings has not been produced, will in question is a forged and fabricated one. There is no evidence on record to indicate that Rattan Singh was under the influence of Jujhar Singh, due to which the will in question was executed. Moreover, the stand taken by the appellant is that the said will is a forged and fabricated one. There is no such evidence on record to impinge upon the genuineness of the subsequent will dated 10.09.1985. Evidence on record clearly indicates that possession of the suit property was

not with the plaintiff. Ex.DW5/A, reflects that possession of the suit property was taken from the plaintiff. In this view of the matter both the learned Courts below have correctly held that the plaintiff was not in possession of the land measuring 10 Kanals 10 Marlas, as alleged. Therefore, no relief as sought, can be granted to the plaintiff.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. Learned counsel is unable to point out any ground as specified in Section 41 of the Punjab Courts Act, 1918 to interfere in the impugned judgments. It has been held by the Hon'ble Supreme Court in **Pankajakshi (Dead) through LRs and others versus Chandrika and others 2016 (2) RCR (Civil) 245 and Kirodi (since deceased) through his LR versus Ram Parkash and others in Civil Appeal No. 4988 of 2019, SLP (C) No. 11527 of 2019** that a second appeal insofar as the State of Punjab is concerned, does not require a formulation of a substantial question of law, due to applicability of the Punjab Court Act, 1918. Otherwise too, in the present case, no such question of law arises for adjudication in these cases.

In my considered opinion, there is no illegality, infirmity or perversity in impugned judgment and decree dated dated 01.06.1994 passed by the learned Additional Senior Sub Judge, Hoshiarpur as well as judgment and decree dated 01.08.1997 passed by the learned Additional District Judge, Hoshiarpur, which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, both these appeals are dismissed with no order as to costs.

11.12.2019

s.khan

[LISA GILL]

Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.