

IOIN-RSA-1265-2000 in/and
RSA-1265-2000

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

IOIN-RSA-1265-2000 in/and
RSA-1265-2000(O&M)
Date of decision:-20.11.2019

Nazar Singh through his LRs

...Appellant

Versus

Saudagar Singh and others

...Respondents

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

Present: None for the appellant.

Mr.Dhirinder Chopra, Advocate
for respondents No.3 and 4.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff – Nazar Singh son of Mangal Singh, a resident of village Chohla, Tehsil Zira had brought a suit against his two brothers, namely, Saudagar Singh and Chaman Singh, two sons of Saudagar Singh, namely, Bahal Singh and Tota Singh, three sons of Chaman Singh, namely, Gurbax Singh and Jaswant Singh and Surjit Singh and one Gurdit Singh son of Chanda Singh, on the assertions that plaintiff along with his brothers Saudagar Singh and Chaman Singh and their father Mangal Singh constituted a Hindu undivided family governed by Mitakshara Branch of Hindu Law in

the matters of alienation and succession; that the suit land situated at village Chohla mentioned in headnote 'A' of the plaint happened to be ancestral coparcenary property of Mangal Singh qua his sons, since it was inherited by Mangal Singh from his father in succession, whereas the part of suit property situated at village Bahawalpur was purchased by Mangal Singh with the earnings of his sons i.e. plaintiff and defendants No.1 and 2 and from income of land of village Chohla; the entire land was standing in the name of Mangal Singh though Mangal Singh along with his sons plaintiff, defendants No.1 and 2 had equal shares therein; Mangal Singh happened to be Karta of the joint Hindu family; he could not alienate the suit property without legal necessity or for benefit of estate; since he intended to do so, his son Chaman Singh defendant in this suit filed a suit against Mangal Singh and his sons Saudagar Singh and Nazar Singh (plaintiff) for permanent injunction restraining Mangal Singh from alienating the coparcenary property without legal necessity and benefit of family; in that suit Mangal Singh (since dead) and defendants No.1 and 2 admitted that Mangal Singh could not sell or alienate the property without legal necessity; that suit was decreed on 12.2.1982 by the Court of the then Sub-Judge, Zira; in the said suit Mangal Singh had admitted that the property in his name was joint Hindu family property and land at village Bahawalpur was purchased by him with the earnings of his sons and from income of land in village Chohla.

The plaintiff further averred that despite that decree against him Mangal Singh, sold land measuring 10 kanals comprised in khasra Nos.16//6(8-0) 15 min(2-0) situated at village Bahawalpur to defendants

No.3 and 4 for a sum of Rs.15,000/- vide registered sale deed dated 26.12.1985; on the same day, he had sold land measuring 10 kanals comprised in khasra Nos.13//16 min (4-18) 17/1(5-2) situated at village Chohla to defendants No.5 and 7 for for a consideration of Rs.15,000/-; those sale deeds were made without consideration and legal necessity, as such are illegal, null and void, ineffective qua rights of the plaintiff; the sale deeds were result of fraud inasmuch as Mangal Singh was aged about 100 years and he was not having proper understanding; he had remained bedridden for the last three years prior to his death; Mangal Singh used to sign in Gurumukhi and he did not thumb mark any document; the market price of the land was not less than Rs.50,000/- per acre at that time.

The plaintiff further alleged in the plaint that defendants No.5 to 7 had exchanged land with Mangal Singh getting 56 kanals 5 marlas of land at village Chohla and in lieu of that giving 56 kanals 10 marlas of land at village Bahawalpur; mutations were sanctioned in that regard on 22.10.1984; the plaintiff challenged that exchange as illegal, null and void, ineffective qua his rights contending that he was co-sharer to the extent of 1/3 share in the land at village Bahawalpur and was in cultivating possession of land measuring 41 kanals 3 marlas there; defendants No.5 to 7 had no right to exchange that land, which was in possession of plaintiff; that defendants No.2 and 8 had also exchanged land measuring 8 kanals 8 marlas of village Chohla with the land measuring 6 kanals 1 marla of village Bahawalpur; that exchange according to the plaintiff was also illegal, null and void because Mangal Singh had no right to do so without the consent of other coparceners; that

plaintiff is a co-sharer to the extent of 1/3 share. The plaintiff further averred that after exchange Mangal Singh sold the land received by him in exchange to defendants No.3 and 4 vide sale deed dated 26.12.1986 for Rs.49,000/-; the sale deed according to the plaintiff is also illegal, null and void and not binding upon him since Mangal Singh had no right to sell the specific khasra numbers, which were not in his possession and the plaintiff being his legal representative/heir is entitled to challenge the alienations made by Mangal Singh. As per the version of the plaintiff on refusal of the defendants to concede his claim, he had knocked at the door of the Court for redressal of his grievances by way of filing a civil suit.

On notice, defendants No.1 to 7 put in appearance and contested the suit. However, defendant No.8 did not appear despite service and was proceeded against ex-parte.

Defendants No.2 and 5 to 7 filed a separate written statement raising various legal objections, on merits admitting the relationship of the parties *inter se* and with Mangal Singh, though denying that the suit property in hands of Mangal Singh was ancestral coparcenary property qua plaintiff. According to the answering defendants, it was self acquired property of Mangal Singh, who validly sold and exchanged the same. As far as the suit filed by defendant No.2 against Mangal Singh, it was contended that it pertained to some other land.

Written statement filed by defendants No.1, 3 and 4 is also on similar lines.

In the end, all the defendants prayed for dismissal of the suit.

On the pleadings of the parties, following issues were

framed:

1. Whether the suit property is coparcenary property of Mangal Singh deceased qua his sons? OPP.
2. If issue No.1 is proved whether alienations challenged in the suit are for consideration and legal necessity and benefit of of the estate? OPD.
- 2A Whether the alienations made by Mangal Singh in favour of defendants No.3 to 7 by way of sale or exchange are the result of fraud, undue influence and impression and are liable to be set aside on the grounds mentioned in the plaint? OPP.
3. Whether the suit of the plaintiff has not been properly valued for the purposes of Court fee and jurisdiction? OPD.
4. Whether the suit is barred by the period of limitation? OPD.
5. Whether the suit is not maintainable in the present form? OPD.
6. Relief.

It is pertinent to mention that issue No.2A was framed after remand of the case.

In order to prove his case, the plaintiff himself got his statement recorded as PW1.

On the other hand, defendants No.2, 5 to 7 had examined Sh.Gurbax Singh (defendant No.5) as DW1 and defendants NO.1, 3 and 4 had examined Sh.Gurnam Singh DW2, Sh.Nirmal Singh, Document Writer as DW3 and defendant No.1 Saudagar Singh himself appeared as DW4.

The suit had been decided earlier by Sub-Judge Ist Class, Zira

on 14.5.1993 but on an appeal having been filed by Bahal Singh and Tota Singh defendants, the case was remanded for fresh decision. After remand an additional issue No.2A was framed. The plaintiff did not lead further evidence. The defendants had however adduced evidence.

After hearing learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff, issue No.2 had become infructuous, issue No.2A was decided in favour of the plaintiff partly and partly against him, issues No.3 to 5 against the defendants. Resultantly, suit of the plaintiff was decreed partly and a decree for declaration to the effect that plaintiff is owner to the extent of 1/3 share of the land measuring 95 kanals 8 marlas out of land measuring 105 kanals and 8 marlas situated in village Chohla fully described in head-note of the plaint, thus excluding 10 kanals of land under sale deed dated 26.12.1985 described under head-note of the plaint B (ii) and entitled for joint possession of the said land was passed in favour of the plaintiff and against the defendants. However, suit for 10 kanals of land situated at village Chohla regarding subject matter of the sale deed 26.12.1985 of land measuring 26 kanals situated at village Bahawalpur was dismissed vide judgment and decree dated 24.9.1997.

Both the parties felt aggrieved by the said judgment and decree passed by the trial Court and filed separate appeals. The appeal filed by defendants Bahal Singh, Saudagar Singh and Tota Singh against Nazar Singh and others was given Civil Appeal No.137 of 1997/99, whereas appeal filed by Nazar Singh against Saudagar Singh and others was given Civil Appeal No.142 of 1997/99. Since both the appeals had

arisen out of the same judgment and decree, those were decided together by learned Additional District Judge, Ferozepur vide judgment and decree dated 9.12.1999 inasmuch judgment and decree passed by the trial Court were upheld and both the appeals were dismissed with costs.

Feeling aggrieved by the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside.

Notice of the appeal was given to the defendants/respondents and and defendants No.3 and 4 put in appearance through counsel.

Since there was no representation on behalf of the appellant despite the fact that vide order dated 14.10.2019 while adjourning the case to 14.11.2019 at request of learned counsel for the appellant, it was observed that request for further adjournment would not be entertained and the next date would be final opportunity for arguments.

I have heard learned counsel for the respondents No.3 and 4 besides going through the record and proceed to decide the appeal, which relates to the year 2000.

The main basis for claim of plaintiff Nazar Singh was that the suit land in name of his father Mangal Singh happened to be joint Hindu family ancestral coparcenary property, which he could not alienate in any manner without legal necessity or benefit of estate, as such it was his bounden duty to establish that fact but he has miserably failed to do so. No document in the form of revenue record has been proved in evidence to show that Mangal Singh had acquired the property from his father or

father's father or father's father father by natural succession. No excerpts of such land were got prepared. The plaintiff is basing his claim upon the admission said to have been made by Mangal Singh and the present defendants No.1 and 2. But merely by such admissions, it is not proved conclusively that the property had nature of joint Hindu family ancestral coparcenary property.

Furthermore, as rightly observed by the trial Court, defendants No.3 to 8 were not party in the earlier proceedings. Therefore, any such admission could not be said to be binding upon them. Defendants No.3 to 8 were claiming their right independently and not through defendants No.1 and 2, therefore, they could not be said to be bound by any alleged admission made by Saudagar Singh in his written statement and the property cannot be held to be joint Hindu family ancestral coparcenary property. It is specific case of defendants that the suit land in hands of Mangal Singh was his self acquired property. Gurbax Singh defendant No.5 appearing as DW1 had stated so. Whereas Saudagar Singh defendant had testified that his father had given the land in family partition to his sons and some land was kept by him, which was his separate property. Mangal Singh had purchased the land with his own earnings. Since the plaintiff had failed to produce any documentary evidence to prove that the suit land was ancestral in hands of Mangal Singh and relied upon oral statement and admission made by Mangal Singh deceased and Saudagar Singh defendant in the written statement filed by them in other proceedings, in view of denial of the defendants, the ancestral nature of the land was not established. It being so, Mangal Singh

had every right to deal with the property in any manner he felt like making sales out of the same or exchanging a chunk of land in his name with some other property and no fault can be found with the same. The Courts below by proper analysis of the legal and factual position have partly accepted the claim of the plaintiff whereas rejecting the remaining part.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

20.11.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No