

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

RSA No.2399 of 1999 (O&M)

Date of decision : 13.02.2019

Pritam Kaur and others

...Appellants

Versus

Surjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Ashwani Talwar, Advocate for the appellants.

Mr. K.S. Dadwal, Advocate for the respondents.

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Basically, plaintiffs have challenged the sale made by their father Babu Singh on the ground that the property is joint hindu family ancestral coparcenary property and, therefore, sale made by him, being without legal necessity, is illegal. It may be noted that this Regular Second Appeal was initially partly allowed to the extent of 1/9th share of the property sold. However, the judgment has been reversed by Hon'ble the Supreme Court in Civil Appeal No.3379 of 2003 decided on 18.01.2013 while remitting the case back to this Court to re-decide the same in accordance with Section 100 of the Code of Civil Procedure.

Undisputed facts are that Diwan Singh, common ancestor of the

plaintiffs as well as defendant Nos.1, was owner of land measuring 87 bighas. He had three sons namely Jaimal Singh, Nihal Singh and Amar Singh. So, each one of them, after the demise of late Sh. Diwan Singh, inherited $1/3^{\text{rd}}$ share in the property i.e. 29 bighas of land each. Jaimal Singh had one son namely Gurmukh Singh, whereas Nihal Singh left behind widow Smt. Sarbi whereas Amar Singh had two sons namely Babu Singh and Rachna. After the death of Nihal Singh, property was inherited by Sarbi whereas after the death of Rachna, property was inherited by Assi, his daughter. However, when Assi got married her property was mutated in favour of Babu Singh. Thus, Babu Singh became owner of land measuring 29 bighas. Sarbi also died and his property was inherited by Gurmukh Singh and Babu Singh in equal shares. Thus, Babu Singh became owner of land measuring 43 bighas and 10 biswas. Babu Singh had four sons namely Joga Singh, Darbara Singh, Ranjit Singh and Surjit Singh. Learned First Appellate Court has recorded a finding of fact that the plaintiffs separated from the family in the year 1976-77 and started residing at Village Bhankarpur with their aunt (mother's sister). Thus, on the day the suit was filed there is no evidence that the family was joint hindu family.

Surjit Singh and Ranjit Singh filed a Civil Suit claiming that Babu Singh in a family settlement had acknowledged them to be owner of land measuring 26 bighas and 6 biswas. It was pleaded case of Ranjit Singh and Surjit Singh that initially the property was joint hindu family ancestral coparcenary property. However, with the intervention of the respectables, a family settlement took place in which Babu Singh acknowledged Surjit Singh and Ranjit Singh to be owners of the land measuring 26 bighas 6

biswas. In this suit, Babu Singh appeared and filed uncontested written statement and on the basis whereof, a judgment and decree dated 22.07.1985 was passed.

Two other sons of Babu Singh namely Joga Singh and Darbara Singh filed a Civil Suit on 23.11.1985 challenging judgment and decree dated 22.07.1985. Joga Singh is also alleged to have filed a suit for injunction restraining Babu Singh from alienating the property in any manner whatsoever. Babu Singh sold entire land measuring 43 bighas and 10 biswas in favour of defendant Nos.2 to 4 vide sale deed dated 22.06.1986. The suit filed by Joga Singh and Darbara Singh for declaration challenging judgment and decree dated 22.07.1985 was dismissed as withdrawn.

Joga Singh and Darbara Singh filed the present suit on 11.08.1986 claiming that the plaintiffs and Babu Singh are governed by Hindu law in the matter of succession and alienation and the property is ancestral coparcenary property and, therefore, the plaintiffs being the sons of Babu Singh have birth right in the joint hindu family ancestral coparcenary property. It is further claimed that Babu Singh, who was head of the family, had no right to transfer/alienate the land in question without legal necessity and since there was no necessity, therefore, the sale is illegal.

The suit was contested by Babu Singh as well as purchasers by filing separate written statements. Babu Singh claimed that the property is his personal property and it is not a joint hindu family ancestral coparcenary property. Babu Singh also claimed that there was legal necessity to sell the property as the property was under a mortgage which was required to be redeemed on payment of ₹38,000/-. It was further pleaded that amount was

required for giving gifts as are customary for a maternal grandfather to his grand child (girl) on her marriage (In Punjabi, it is called '*Nanaki Chhak*') and remaining amount was required for purchasing other property. Defendant Nos.2 to 4 also filed written statement claiming that they are bona fide purchasers without notice.

Both the Courts below on appreciation of evidence have dismissed the suit filed by the plaintiffs.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

At the outset, it must be noticed that the sale deed executed by Babu Singh dated 22.06.1986 which is subject matter of challenge in the present suit is also thumb marked by two sons of Babu Singh namely Surjit Singh and Ranjit Singh. The sale has been made for a total sale consideration of ₹1,50,000/-. Both the Courts have recorded a finding that the property is not proved to be joint hindu family ancestral coparcenary property. It has been found that the property was received by Babu Singh from three different sources. One part of the property was received by him from his father Amar Singh whereas other part of the property was received by him from Assi daughter of Rachna. Third part of the property was succeeded by him from Smt. Sarbi, widow of Nihal Singh. Correctness of these findings is not in dispute.

It has also come in evidence that on the death of Sarbi when the property was succeeded by Babu Singh and Gurmukh Singh jointly, there was partition of the property between them.

Now let us examine as to whether the property is joint hindu family ancestral coparcenary property or not.

In the present case, it has come in evidence that Surjit Singh and Ranjit Singh had filed a suit in the year 1985 on the basis of a family settlement claiming that land measuring 26 bighas and 6 biswas had fallen to their share. Babu Singh had admitted the contents of the aforesaid plaint and a decree was passed on that basis on 22.07.1985. Thus, there is evidence that there is disruption in the family. Still further, it has come in evidence that Joga Singh and Darbara Singh had separated and started living at Village Bhankarpur with sister of their mother and they were not residing with Babu Singh from a long time. Still further, two parts of the property had come to Babu Singh through females who could not be at the relevant time member of Mitakshra Coparcenary. Once it has come in evidence that plaintiffs-appellants were not even residing with the family and had separated, the suit filed by them was without any substance.

Still further, this issue can be examined from another angle. In the year 1985, in a judgment and decree, it was acknowledged that there was a family settlement and land measuring 26 bighas and 6 biswas had come to the share of Surjit Singh and Ranjit Singh. The aforesaid decree has never been set aside. Thus, once there was disruption in the family, the property could not be said to have continued as joint hindu family ancestral coparcenary property.

Now let us examine the plea of legal necessity.

In the present case, it has been recorded in the sale deed dated 22.06.1986 that mortgage amount is required to be repaid i.e.

approximately ₹38,000/-. It has also come in evidence that the defendants have already paid ₹13,000/- against receipts to get a part of the property redeemed. It has further been recorded that customary gifts on the marriage of a grand child (girl) have to be paid and, therefore, the amount is required. It has further been recited in the sale deed that Babu Singh requires the amount for purchase of other property. Babu Singh when filed written statement has also reiterated those facts in the present proceedings. In such circumstances, both the Courts have correctly held that legal necessity of the family is established on the file.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

13.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No