

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.2319 of 2005 (O&M)

Date of Decision:12.03.2019

Surinder Singh and others

...Appellant(s)

Versus

Satinder Singh and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Sanjay Majithia, Senior Advocate with
Mr.Inderjeet Singh, Advocate for the appellants.
Mr.Arun Jain, Senior Advocate with
Mr.Abhishek Dhull, Advocate for the respondents.

ANIL KSHETARPAL, J.

The plaintiffs-appellants are in the regular second appeal against the judgment passed by the learned first appellate court.

The plaintiffs had challenged a judgment and decree suffered by Hazura Singh, their predecessor-in-interest, in favour of defendant Nos.1 and 2 i.e. Satinder Singh and Harinder Singh sons of Parminder Singh son of Hazura Singh. In other words, the judgment and decree was suffered by defendant No.3-Mohan Kaur wife of Hazura Singh in favour of his grandsons.

The learned trial court on appreciation of pleadings framed following issues:-

“1. Whether defendant No.3 Mohan Kaur under will dated 19.10.1970 was limited owner of the suit land without any right to transfer or alienate the suit land? OPP

1-A Whether the defendants no.3 has become owner of the suit property u/s 14(1) of Hindu Succession Act? OPD

2. *Whether defendant no.3 Mohan Kaur has relinquished her right in the suit land same has vested in the plaintiffs and proforma defendants no.4 to 6 as full owners in equal shares? OPP*
3. *Whether the suit land is the joint Hindu family coparcenary property qua the plaintiffs and the defendants no.4 to 6. If so its effect? OPP*
4. *Whether suit is not maintainable in the present form? OPD*
5. *Whether the decree in favour of defendants no.1 and 2 against defendant no.3 is binding on the plaintiffs and proforma defendants no.4 to 6? OPD*
6. *Whether the suit is barred by limitation? OPD*
7. *Whether the defendants are entitled to compensatory costs u/s 35-A CPC? OPD*
8. *Relief.”*

It is apparent that issue No.3 was with regard to property being joint Hindu family coparcenary property and issue No.5 was with regard to validity of the decree.

The learned trial court on appreciation of evidence decided issue No.3 in favour of the plaintiff while recording following findings:-

“Burden to prove this issue was on the plaintiffs. Perusal of oral as well as documentary evidence produced by the plaintiffs shows that originally property in dispute was the ownership of grand father of Hazura Singh which land was allotted in lieu of land previously owned by grand father of Hazura Singh. This land came to Partap Singh father of the plaintiffs and after the death of Partap Singh, plaintiffs have inherited the property in dispute. During his lifetime Hazura Singh executed a will with limited interest i.e. life interest to his wife who was recorded as owner in the jamabandi. Defendants No.1 and 2 have got collusive decree against defendant no.3. Defendant no.3 was having only life interest in the property in

dispute and was not competent to get the decree passed. Property in dispute came to Hazura Singh from his grand father as is clear from the oral as well as documentary evidence, as such, property in dispute is joint Hindu family coparcenary property of the parties. So, this issue is decided in favour of plaintiffs and against the defendants.

However, similarly issue No.5 was also decided in favour of the plaintiffs.

However, in appeal, the learned first appellate court has decided these issues with following findings:-

“Ld. counsel for the respondents has argued that the suit property was ancestral property of Hazura Singh and no will qua the ancestral property could be executed by him in favour of Mohan Kaur. This point raised by ld. counsel for the respondent is without any basis as per the plaintiffs have nowhere challenged the authority of Hazura Singh to execute the will in favour of Mohan Kaur. This fact has been admitted that Hazura Singh executed the Will dated 19.10.1970 and the plaintiffs have admitted even in the replication that they consented for the mutation to be entered on the basis of this will. They have never challenged the authority of Hazura Singh to execute the will. In view of this, the fact as to whether the suit property was joint Hindu Family Coparcenary property qua the plaintiff and defendant no.4 and 6 goes in oblivion and becomes insignificant. The only question which require answer is the effect of the will and the right of Mohan Kaur to deal with the property inherited by her from Hazura Singh vide will dated 19.10.1970.”

Once there is an issue framed with regard to the property being joint Hindu family coparcenary property and there is also an issue with regard to correctness of judgment and decree dated 3.2.1993 suffered by Smt.Mohan Kaur, the learned first appellate court was not correct in

returning a finding that power of Hazura Singh to execute the will in favour of Mohan Kaur has not been challenged by the plaintiff.

Keeping in view the aforesaid fact, the judgment and decree passed by the learned first appellate court are set aside. The learned first appellate court is requested to re-decide the appeal preferably within a period of six months in accordance with law without being influenced either by the observations made by this Court or by the judgment impugned herein.

Parties through their respective counsels are directed to appear before the learned first appellate court on 28.03.2019. The learned first appellate court is also requested to decide the appeal preferably within six months from 28.03.2019.

In view of the above, regular second appeal is disposed of. Pending application(s), if any, shall also stand disposed of, in terms thereof.

12.03.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No