

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 2169 of 2005 (O&M)
Date of decision: 18.07.2019

Naurang Singh

...Appellant

V/s.

Jasmer Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Aashish Chopra, Advocate with
Mr. Prateek Sodhi, Advocate for the appellants.

Mr. Roopak Bansal, Advocate
for respondents no. 1, 2, 5 to 7 .

RITU BAHRI, J. (Oral).
CM-10801-C-2018

This is an application for substituting the applicants as the appellants in the appeal.

During the pendency of this RSA, Naurang Singh/appellant executed sale deed on 14.08.2008 in favour of Major Singh son of Karnail Singh for the land measuring 39 Kanals 8 Marlas. The sale deed was challenged by respondents no. 1 and 2 in civil suit no. 882T on 06.11.2008 against Naurang Singh, respondent no. 4 and Major Singh. The appellant and respondent no. 4 were proceeded ex parte and only Major Singh had put in appearance. The suit was dismissed in default on 12.09.2013 and thereafter suit was restored on 21.12.2016. The suit was decreed exparte on 21.01.2017 and prior to decree of the suit, Major Singh sold entire share of 39 Kanals 8 Marlas to Smt. Jyoti wife of Dr. Sanjeev Kumar and to Gagandeep Singh son of S. Ajit Singh i.e. the applicants herein vide two

separate sale deeds, both dated 14.03.2011. The copies of sale deeds are annexed as Annexure P/1. The applicants being bonafide purchaser have a right to contest this appeal now. Application is allowed and the amended memo of parties is taken on record.

RSA-2169-2005

The present appeal has been filed by Naurang Singh-defendant against the judgment of the trial Court dated 27.04.2002 and lower appellate court dated 09.12.2003 whereby suit of the plaintiff for declaration and permanent injunction is partly decreed for declaration to the extent that plaintiffs (excluding plaintiffs no. 3 to 5) and defendants are joint owners in possession of property in dispute as detailed in the head note of the plaint except khasra no. 9//14 (7-4) with the defendants being co-parceners.

The facts in brief are that plaintiffs no. 1 to 5 and defendant no. 2 are the real sons and daughters of defendant no. 1 Naurang Singh and plaintiff no. 6 Rachan Kaur is the legally wedded wife of Naurang Singh. The pedigree table is as under :-

Palla

Tule Ram

Naurang Singh-Rachan Kaur (wife)

Jasmer Singh	Surinder Singh	Mohinder Singh	Charanjit Kaur	Paramjit Kaur	Swaranjit Kaur
(-----sons-----)			(-----daughters-----)		

The case of the plaintiffs is that suit property is ancestral and joint hindu coparcenary property as defendant no. 1 had inherited the same from his father Tule Ram who had inherited from his father Palla Ram. The plaintiffs' assertion is that they alongwith defendant no. 2 have a right in the suit property by birth and defendant no. 1 Naurang Singh is a Karta of the

family and the plaintiffs and defendant no. 2 have 1/8th share each in revenue entries in the suit property. Their further case is that defendant no. 1 is addict extravagant person and refused to accept the claim of the plaintiffs to the extent of 1/8th share each and had threatened to alienate the suit property.

On notice of the suit, defendant no. 1 contested the suit while defendant no. 2 proceeded exparte. The stand taken by defendant no. 1 was that the suit property was not ancestral in nature and it was his self acquired property and the plaintiffs do not have any right in the suit property and raised preliminary objections with regard to maintainability of the suit. Following issues were framed:-

- “1. Whether the plaintiffs are entitled for declaration as prayed for? OPP.
2. Whether the plaintiffs are entitled for injunction as prayed for? OPP.
3. Whether the suit is not maintainable? OPD.
4. Whether the plaintiffs have concealed the material facts from the court? OPD.
5. Whether the suit is bad for mis-joinder and non-joinder of the necessary parties? OPD.
6. Relief.”

Both the courts have given a concurrent finding of fact that as per **jamabandi for the year 1957-58** (Ex.P3) which was prepared after the consolidation of the holdings shows that Tule Ram son of Palla Ram was owner of the property except for khasra no. 9//14 (7-4). As per Ex.P-2 which is copy of mutation no. 1035, this mutation has been sanctioned in favour of Naurang Singh in respect of property belonging to his father Tule Ram after his death.

Ex. P-1 is a copy of jamabandi for the year 1963-64, the suit property except for khasra no.9//14(7-4) is shown to be owned by Naurang Singh and there is note in the remarks column that the same has been entered in the name of Naurang Singh pursuant to mutation of inheritance no. 1035. No evidence was led to show that this property was self acquired and the finding was given that keeping in view jamabandi (Exs.P-2 and P-3), Naurang Singh had inherited this property from his father Tule Ram and as per the definition of ancestral property it qualified to be termed as ancestral co-parcenary suit property. Reference was made to a Division Bench judgment passed by this Court in *Asha Rani V/s. The Controller of Estate Duty*, 1997(2) CCC 497, wherein it has been held that coparcener acquires interest in the ancestral property by birth and the property inherited from father, grand father and great grand father is ancestral property. As far as plaintiffs no. 3, 4 and 5 are concerned, being daughters of defendant no. 1, they were not held to be entitled for any right in the coparcenary property under the Mitakshara School of Hindu Law in view of para 217 of Principles of Hindu Law by Mulla and finally keeping in view para 235 of Principles of Hindu Law by Mulla it was held that defendants no.1 and 2 are joint owners being co-parceners and were entitled for possession to the suit property except for the land comprising khasra no. 9//14(7-4). The plaintiffs being females do not have any right in the suit property in view of para 217 of Principles of Hindu Law by Mulla. While decreeing the suit, it was further held that defendant no. 1 being Karta of the family, there was no patent error in recording of the entry in jamabandi (Ex.P-2) and the lower appellate court while dismissing the appeal of the defendants modified the decree of the trial Court that suit of the plaintiffs had been decreed to the

limited extent that plaintiffs no. 1 and 2 were joint owners and in joint possession of the property in dispute

Learned counsel for the appellant Mr. Chopra has vehemently argued that the suit property in the present case was not ancestral property. While referring to the pedigree table, he has argued that property in the hands of Naurang Singh would be ancestral only if this property had come to Naurang Singh from three generations above i.e. the property came to Tule Ram and he inherited from Palla Ram and Palla Ram inherited this property from his father. In short, the property in the hands of Naurang Singh had come from his father, grandfather and great grandfather. Since no evidence has been led to show that property had been inherited by Palle Ram from his father, the finding on issue no. 1 that property ancestral in nature has been wrongly given. He has further argued that after coming into force of Hindu Succession Act, 1956 if a claim is made that the property is ancestral, the plaintiffs have to prove that how this property had travelled in the hands of the plaintiffs from their father, grandfather and great grandfather. However no evidence is led to show that property had come into the hands of the plaintiffs in the above stated manner, a finding can never be given that this is ancestral property.

In the present case, the only evidence led by the plaintiffs was jamabandi for the year 1963-64 (Ex.P1), mutation no. 1035 (Ex.P2) and jamabandi for the year 1957-58 (Ex.P3) which were sanctioned in favour of Naurang Singh son of Tule Ram and there was no evidence led to show that Tule Ram had inherited this property from Palla Ram and Palla Ram had inherited this property from his father. Since the property did not travel from three generations in the hands of Naurang Singh, it did not have a

character of ancestral property. He has further referred to the following judgments:-

1. ***Commissioner of Wealth Tax, Kanpur etc. V/s. Chander Sen etc.*** 1986 (3) SCC 567
2. ***Yudhister V/s. Ashok Kumar*** 1987(1) RCR (Rent) 225
3. ***Sunny (minor) V/s. Raj Singh*** 2015(45) RCR (Civil) 708
4. ***Tehal Singh and Another V/s. Shamsher Singh through LRs*** 2015(81) R.C.R. (Civil) 676
5. ***Sh. Surender Kumar V/s. Sh. Dhani Ram and others*** 2016 AIR (Delhi) 120.
6. ***Baliyar Singh V/s. Sarabjit Kaur and others*** 2017(2) PLR 226.
7. ***Bachhittar Singh V/s. Gurbachan Kaur*** 2018 SCC Online (P&H) 3082
8. ***A.N. Kaul V/s. Neerja Kaur and another*** 2018(3)R.C.R. (Civil) 501.
9. ***Arshnoor Singh V/s. Harpal Kaur*** 2019 SCC OnLine SC 801

Mr. Roopak Bansal, learned counsel for the respondents has argued that the judgments passed by both the courts do not require any interference as presumption of truth is attached in the jamabandi under Section 44 of Punjab Land Revenue Act. After Hindu Succession Act 1956, Naurang Singh had inherited this property from his father Tule Ram and the property does not lose the character of coparcenary property. The property had come in the hands of Naurang Singh from his father and after Hindu Succession Act, 1956 the property would not lose the character of ancestral property and as per the Mitakshara School of Hindu Law, females do not

have any right in the coparcenary property and the wife has only a right of maintenance out of husband's property. He has further argued that as per sub clause 2 of para 235 of Principles of Hindu Law by Mulla, each coparcener is entitled to joint possession and enjoyment of the family property, if any coparcener is excluded by other coparcener from use and enjoyment in joint property, such aggrieved coparcener can seek injunction restraining the defendants from obstructing the plaintiff in enjoying the same.

The judgment of the lower appellate court has modified the judgment of the trial court and has rightly held that share of each coparcener in ancestral property is ever fluctuating and member of joint family cannot predicate at any moment as to what would be his share in his property. The share can only be defined at a particular moment by enforcing a partition which is provided in para 307 of Principles of Hindu Law.

After hearing learned counsel for the parties, the substantial question of law which arises for consideration in the present case is whether the plaintiffs are entitled for declaration that the property in dispute is coparcenary property as per the evidence i.e. Jamabandi for the year 1957-58 (Ex.P3), jamabandi for the year 1963-64 (Ex.P1) and mutation (Ex.P2)?

The present suit has been filed on 15.06.1999 for declaration and permanent injunction restraining defendant no. 1 from alienating the suit property by way of sale, mortgage, exchange or any other manner. In the suit for declaration, the plaintiffs and defendants are joint owners in joint possession of the property as per the details given in the plaint to the extent of 1/8th share each as the property being ancestral and joint hindu coparcenary property. The Supreme Court in 1986 (3) SCC 567

Commissioner of Wealth Tax, Kanpur etc. V/s. Chander Sen etc. was examining the case where one Rangi Lal and his son Chander Sen constituted a Hindu undivided family. There was a partition in the family by which the business was divided between father and the son in 1961 and thereafter it was carried on by a partnership consisting of the two. On 17.07.1965 Rangi Lal died leaving behind his son Chander Sen and his grandsons. His wife and mother predeceased him and he had no other issue except Chander Sen. Chander Sen had constituted a joint family with his own sons, and had filed a return of his net wealth. The return included the property of the family which on the death of Rangi Lal passed on to Chander Sen by survivorship and also the assets of the business which devolved upon Chander Sen after the death of his father. The amount showing in the credit of Rangi Lal was not included in the net wealth of the family of Chander Sen (in short 'assessee family') as this amount had devolved upon Chander Sen in his individual capacity and was not the property of assessee family. The Wealth-tax Officer did not accept this contention and held that the sum inherited by Chander Sen from Rangi Lal belonged to the assessee family. On appeal the Appellate Assistant Commissioner of Income-tax accepted the assessee's claim in full and held that the capital in the name of Rangi Lal devolved on Chander Sen in his individual capacity and as such was not to be included in the wealth of assessee family. The revenue filed three appeals before the Income-tax Appellate Tribunal and the appeals were dismissed. The Supreme Court proceeded to examine the provisions of Section 8 of Hindu Succession Act, 1956 that when a male Hindu died intestate, the property has to devolve as per chapter II and Class I of the Schedule provides that if there is a male

heir of Class I then upon the heirs mentioned in Class I of the Schedule.

Class of the Schedule reads as follows:-

“Son; daughter; widow; mother; son of a predeceased son; daughter of a predeceased son; son of a predeceased daughter; daughter of a predeceased daughter; widow of a predeceased son; son of a predeceased son of a predeceased son; daughter of a predeceased son of a predeceased son, widow of a predeceased son of a predeceased son.”

The above said heirs include the son of a predeceased son but does not include the grandson when his father is still alive. Hence, as per the Section 8 of Hindu Succession Act, 1956, if a son inherits a property after the death of his father, it would be income of the son individually **and not as the karta of his own family.**

A similar view expressed by Allahabad High Court, Madras High Court, Madhya Pradesh High Court and Andhra Pradesh High Court was approved by Supreme Court and Supreme Court did not agree with the view expressed by Gujarat High Court and the SLP filed by Revenue was dismissed. The judgment of *Commissioner of Wealth Tax (supra)* was thereafter considered by Supreme Court in *Yudhister V/s. Ashok Kumar* 1987(1) RCR (Rent) 225. The Supreme Court was examining the case under the Haryana Urban (Control of Rent and Eviction) Act, 1973. The landlord was staying in the house as licensee of his father. He purchased the house and thereafter sought eviction of the tenant on the ground of bonafide requirement. The Rent Controller rejected the petition of the landlord on the ground that landlord had not been able to prove all the ingredients of Section 13(3)(a)(i) of the Act. The landlord thereafter filed an appeal before the appellate authority and while allowing the application for additional evidence, allowed the appeal. The revision filed by the tenant

was dismissed by the High Court in limine. Thereafter the tenant went to the Supreme Court and Supreme Court while examining the case of the tenant, has observed that the appellate authority while allowing the appeal of the landlord had held that landlord was a licensee with respect to the ancestral house and he was staying there with the permission or the license given to him by his father and as such his interest in the ancestral house could not be considered to be “occupying another residential house” in terms of Clause (1) of Sub-section 3(a) of Section 13 of the Act. The main question before the Supreme Court was whether the co-parcener who was in possession of ancestral house could be considered as a licensee of his father as per the Mitakshara joint family? In this backdrop, the Supreme Court had referred to the judgment in the case of *Commissioner of Wealth Tax (supra)* in para 10 of *Yudhster V/s. Ashok Kumar* 1987(1) RCR (Rent) 225 and observed as under:-

“This question has been considered by this Court in Commissioner of Wealth Tax, Kanpur and Others v. Chander Sen and Others, [1986] 3 SCC 567 where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father’s property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by section 8, he does

not take it as Kar of his own undivided family but takes it in his individual capacity. At pages 577 to 578 of the report, this Court dealt with the effect of section 6 of the Hindu Succession Act, 1956 and the commentary made by Mulla, 15th Edn. pages 924-926 as well as Mayne's on Hindu Law 12th Edition pages 918-919. Shri Banerji relied on the said observations of Mayne on 'Hindu Law', 12th Edn. at pages 918-919. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to be correct and was unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law, 12th Edn. page 919. In that view of the matter, it would be difficult to hold that property which developed on a Hindu under section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-a-vis his own sons. If that be the position then the property which developed upon the father of the respondent in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house."

The Supreme Court held that even if the landlord was a member of the HUF which owned the ancestral house, having regard to his share in the property and having regard to the need of other sons of the father who were living in the ancestral house alongwith their families, the need of the landlord was bonafide. Even if the another house owned by the landlord has been sold to his wife and was a benami transaction, he had a right to do so by selling the said premises and it would not be a bar to claim eviction for bonafide need under Section 13(3)(a)(i) of the said Act.

The Delhi High Court in the case of ***Sunny (minor) V/s. Raj Singh*** 2015(45) RCR (Civil) 708 in a suit for partition and rendition of accounts has examined the provisions of Hindu Succession Act, 1956. In a suit for partition, the case of the plaintiffs was that the ancestral land being plot no. 93 situated in Village Adhichini, Hauz Khas, New Delhi was sold and thereafter from the funds generated, other properties had been purchased, which were the subject matter of the suit. These properties became joint Hindu Undivided Family properties/HUF properties. The case of the defendants was that the plaintiffs had no right for partition as after selling plot no. 93 situated in Village Adhichini, Hauz Khas, New Delhi, the father of the plaintiffs was given his share in the consideration received and the properties became self acquired property of defendant no. 1 Gagan Singh and the plaintiffs had no right in the said suit property.

In this backdrop, the plaintiffs were required to lead evidence to show that plot no. 93 situated in Village Adhichini, Hauz Khas, New Delhi, which was owned by defendant no. 1 was the ancestral property, since HUF properties was created after 1956 and the said property became a part of common hotchpotch of defendant no. 1. Merely by leading oral evidence existence of HUF cannot be made out. For an HUF and its property to come into existence, the same has to firstly be pleaded to exist as per the ratio of Supreme Court in ***Commissioner of Wealth Tax (supra)*** and ***Yudhister (supra)*** read with Order 6 Rule 4 CPC. In paras 12 and 13, it has been observed as under:-

“12. I may note that counsel for the plaintiffs sought to place reliance upon a certified copy of the written statement filed by the defendants in an earlier suit filed by Smt. Poonam and attention of this Court was drawn to para 5 of the said written

statement which as per the plaintiffs shows the admission of the defendants that property no.93, Village Adhichini, Hauz Khas, New Delhi was an 'ancestral' property. This argument of the plaintiffs is liable to be rejected for two reasons. Firstly, this document has not been proved and mere filing of a certified copy of a written statement in an earlier suit will not amount to proof of the same. Written statement filed in a civil suit is a private document, and this private document in public record has to be proved by summoning the file containing the written statement and thereafter the certified copy being proved and exhibited in accordance with law, and which has not been done. The second reason is that even if we take into account the averments contained in para 5 of the written statement filed by the defendants in the earlier suit, it is seen that the averments only show that the property no.93, Village Adhichini is an 'ancestral' property as defendant no.1/Gugan Singh acquired it from his ancestors, however, mere acquiring of property by defendant no.1 from his ancestor Sh. Tek Chand who died in 1982 will not make the property an HUF property in view of the ratio of the judgment of the Supreme Court in Yudhishter's case (supra) quoted above. Post 1956 the position is that even if Sh. Gugan Singh/defendant no.1 inherited any property from his father Sh. Tek Chand, inheritance by Sh. Gugan Singh of the property of Sh. Tek Chand in 1982 would be as a self-acquired property of Sh. Gugan Singh and not an HUF property. A paternal ancestral property could be an HUF property only if such property was inherited by Sh. Tek Chand prior to 1956, but that is not the case which has been so pleaded and proved by the plaintiff for discharging the onus in this regard.

13. I may note that in the cross-examination of PW1 on 18.05.2012 a suggestion was put by the defendants that the share of her husband namely Sh. Harvinder Sejwal in the property no.93, Village Adhichini was paid to Sh. Harvinder Sejwal, however, such receipt of consideration by Sh.

Harvinder Sejwal cannot be said to be on the ground that the same was given to him on account of the property being an HUF property because payment of part price to Sh. Harvinder Sejwal by his father/defendant no.1 can be for various reasons including Sh. Harvinder Sejwal being the son of the defendant no.1 and as a son he could have been paid by the father/defendant no.1, part consideration of sale of the property no.93, Village Adhichini, Hauz Khas, New Delhi, whereas, the creation of an HUF in law had to be proved (either pre 1956 or post 1956) by leading clear-cut evidence discharging the onus of proof and which has not been done by the plaintiffs.”

Hence, as per the above said judgment if a civil suit is filed with respect to property being HUF after 1956, the nature of the property being ancestral before 1956 has to be specifically pleaded and evidence led. Post 1956, the property has to be shown that this property was added to the HUF property. In the absence of any evidence, no benefit can be given to plaintiff that the property is ancestral in nature. A coordinate Bench of this Court in ***Baliyar Singh V/s. Sarabjit Kaur and others*** 2017(2) PLR 226 had allowed the Regular Second Appeal that there was no evidence led by the plaintiffs to show the nature and character of the property i.e. ancestral/co-parcenary. In order to prove the property being ancestral, it has to come in the hands from three generations. The plaintiffs had to lead direct and cogent evidence to show that property is ancestral in the hands of the plaintiffs. In the absence of such evidence, the Regular Second Appeal filed by the defendant was allowed by referring the judgment of Supreme Court in ***Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213*** where it has been held that there is no need to

frame the substantial question of law under Section 41 of the Punjab Courts Act, 1918 for allowing Regular Second Appeal.

Recently, the Supreme Court in the case of *Arshnoor Singh V/s. Harpal Kaur* 2019 SCC OnLine SC 801 was examining the case where one Lal Singh passed away in 1951 and his only son Inder Singh inherited his entire property. During his life time, Inder Singh effected a partition of the entire property vide decree dated 04.11.1964 passed in Civil Suit no. 182 of 04.11.1962 between his three sons i.e. Gurcharan Singh, Dharam Singh and Swaran Singh. The sons had transferred 1/4th share of the entire property back to their father for his sustenance. Inder Singh expired on 15.04.1970 and his 1/4th share was inherited by his widow, three sons and daughter. Dharam Singh had only one son viz. Arshnoor Singh. Dharam Singh sold the entire suit property to respondent no. 1 viz. Harpal Kaour for an ostensible sale consideration of Rs.4,87,500/- vide two registered sale deeds. The appellant was the son of Dharam Singh and when he became major, he filed a suit for declaration against his father as defendant no. 1 and defendant no. 2 Harpal Kaur that the suit property was coparcenary property and two sale deeds executed by his father in favour of respondent no. 1 Harpal Kaur were illegal, null and void. During the pendency of the suit Harpal Kaur entered into a transaction and sold the property to respondents no. 2 and 3 vide sale deed dated 30.10.2007. The trial Court decreed the suit in favour of the appellant/plaintiff and held that property was ancestral in nature and there was no legal necessity for making the sale in favour of respondent no. 1. The appellate Court dismissed the appeal on 13.01.2014. The Regular Second Appeal filed by respondents no. 1, 2 and 3 before the High Court was allowed vide order dated 13.11.2018,

and the concurrent findings of the courts below were set aside. The High Court held as under:-

“3.14. The High Court *vide* the impugned judgment & order dated 13.11.2018, allowed the RSA filed by the respondents and set aside the concurrent findings of the Court below.

The High Court held that (i) the Appellant had no locus to institute the Suit, since the coparcenary property ceased to exist after Inder Singh partitioned the property between his 3 sons in 1964; (ii) the Appellant had no right to challenge the Sale Deeds executed on 01.09.1999 on the ground that the sale consideration had not been paid, since only the executant of the Sale Deeds viz. Dharam Singh (Defendant no. 1) could have made such a challenge; and (iii) Jamabandis for the years 1957-58 till 1970-71 were not produced by the appellant.”

Feeling aggrieved, the appellant had filed the Civil Appeal before the Supreme Court. The Supreme Court further referred the judgment passed in ***Yudhister (supra)*** and held as under:-

“12.4 In *Yudhishter v. Ashok Kumar*, this Court held that:

11. This question has been considered by this Court in *Commissioner of Wealth Tax, Kanpur v. Chander Sen* [1986] 161 ITR 370 (SC) where one of us (*Sabyasachi Mukharji, J*) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who from joint Hindu family with him. This Court observed that

this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Kar of his own undivided family but takes it in his individual capacity.”

12.5 After the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post-1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired property, and does not remain coparcenary property.

12.6 If succession opened under the old Hindu law, i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by *Mitakshara* law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-a-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.

12.7 In the present case, the succession opened in 1951 on the death of Lal Singh. The nature of the property inherited by his son Inder Singh was coparcenary in nature. Even though Inder Singh had effected a partition of the coparcenary property amongst his sons in 1964, the nature of the property inherited by Inder Singh's sons would remain as coparcenary property qua their male descendants upto three degree below them.”

In the above case, the Supreme Court further observed that entire property of Lal Singh was inherited by his only one son i.e. Inder Singh. This property was partitioned between three sons of Inder Singh vide decree dated 04.11.1964, the nature of the property inherited by Inder Singh's sons would remain as coparcenary property qua their male descendants upto three degrees below them and hence the property continued to remain coparcenary property qua the appellant as well. Once

the property was held to be coparcenary, keeping in view that Dharam Singh had made a sale in favour of defendant no. 2-Harpal Kaur was without any sale consideration and hence there was no legal necessity for making the sale. Consequently, the appeal was allowed and the sale deeds were set aside.

To prove the nature of property bring coparcenary, the plaintiffs were required to lead evidence that before Hindu Succession Act, 1956, the property in the hands of Tule Ram was ancestral in nature, but no such evidence has been led as required under Order 6 Rule 4 CPC. The only evidence led by the plaintiffs was jamabandi for the year 1957-58 (Ex.P3), copy of mutation no. 1035 (Ex.P2), and copy of jamabandi for the year 1963-64 (Ex.P1). Apart from these jamabandis and mutation, there is no evidence to show that property in the hands of Naurang Singh was ancestral in nature before Hindu Succession Act, 1956.

As per the judgment passed by the coordinate Bench of this Court in **Balihar Singh V/s. Sarabjit Kaur and others** 2017(2) PLR 226, the plaintiffs has to lead evidence to show that the property was ancestral and it had come in the hands of Naurang Singh from three generations after Hindu Succession Act, 1956. The Supreme Court in the case of **Arshnoor Singh V/s. Harpal Kaur** 2019 SCC OnLine SC 801, while referring to the earlier judgment of Supreme Court in **Yudhister V/s. Ashok Kumar** 1987(1) RCR (Rent) 225, has held that post 1956, if a person inherits a property, the property becomes his self acquired property and if he has to take benefit under the old Hindu law, a specific evidence has to be led that the property had come to him from three generations. In the facts of the present case, the only evidence led by the plaintiffs was jamabandi for the year 1963-64

(Ex.P1), mutation no. 1035 (Ex.P2) and jamabandi for the year 1957-58 (Ex.P3). Apart from this, there was no evidence led by the plaintiffs as required under Order 6 Rule 4 CPC that the property in the hands of Naurang Singh had travelled from three generations i.e. Tule Ram had inherited this property from his father Palla Ram and Palla Ram had inherited this property from his father.

In the absence of any direct and cogent evidence, the property in the hands of Naurang Singh cannot be taken as ancestral property and was not part of Hindu Undivided Family as per para 235 of Principles of Hindu Law by Mulla and the finding on issue no. 1 deserves to be set aside. No injunction can be granted against the defendants since plaintiffs (excluding plaintiffs no. 3 to 5) and defendants are joint owners and in joint possession of the property in dispute being ancestral property.

Hence, the Regular Second Appeal is being allowed. The judgments of the trial court dated 27.04.2002 and of lower appellate court dated 09.12.2003 are set aside and consequently suit of the plaintiffs/respondents is dismissed.

(RITU BAHRI)
JUDGE

18.07.2019

Divyanshi

Whether speaking/reasoned
Whether reportable

:
:

Yes/No
Yes/No