

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

RSA No.1213 of 2006 (O&M)

Date of decision : 06.03.2019

Jagir Singh and another

...Appellants

Versus

Des Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. S.K. Bajaj, Advocate and
Mr. L.S. Sidhu, Advocate for the appellants.

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

ANIL KSHETARPAL, J.

Defendants-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment and decree passed by the learned trial Court.

Detailed facts are not required to be noticed as this Court is of the considered view that the case deserves to be remanded back to the First Appellate Court.

Jagir Singh was having two sons, Mohinder Singh and Balwinder Singh. Mohinder Singh died leaving behind his widow Rano and a minor son-Des Singh again plaintiffs-respondents. Jagir Singh executed attorney authorizing his wife who pursuant to the aforesaid attorney given by her husband transferred land measuring 20 kanals in favour of his second son Balwinder Singh through a sale deed which has been challenged by the plaintiffs claiming that the suit property is joint hindu family ancestral coparcenary property and, therefore, the sale deed being without legal

necessity is void. It may be significant to mention here that the plaintiffs had also prayed for decree by way of partition of the property.

Defendants contested the suit and pleaded that the property is self-acquired property of Jagir Singh and, therefore, the sale is valid.

Learned trial Court, on appreciation of evidence, found that property is not proved to be joint hindu family ancestral coparcenary property. The Court noticed that on the death of Kishan Singh, father of Jagir Singh and grandfather of Mohinder Singh, property was succeeded by the legal heirs under Section 8 of the Hindu Succession Act, 1956 amongst five Class-I heirs including widow of Kishan Singh in equal share. Thus, the suit was dismissed.

In appeal, learned First Appellate Court has reversed the finding on the ground that the property is proved to have come from Kishan Singh, father of Jagir Singh and in oral evidence there is an admission that the property is ancestral coparcenary property.

At the time of admission, following substantial questions of law were framed:-

“1) Whether the judgment of reversal dated 13.10.2005 by learned Addl. District Judge is unsustainable in view of the admitted factual and legal position that the non-ancestral lands mixed with the assuming ancestral lands can be challenged and consequently made the basis of a decree in the absence of any Joint Hindu Family between the respondents and the appellants?

2) Whether in Joint Hindu Family Coparcenary Ancestral Property do share devolves upon widow by way of survivorship?

3) *Whether the respondent-plaintiffs have any locus standi (right) to challenge the alienation of suit land vide sale deed dated 1.12.94 on the ground that it was executed without any legal necessity even though they have miserably failed to prove that they constitute a joint hindu family coparcenary comprising of respondent-plaintiffs and appellant-defendants?"*

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

Learned counsel for the appellants has submitted that property is not proved to be joint hindu family ancestral coparcenary property as on the death of Kishan Singh, property left behind by Kishan Singh was succeeded by the Class-I heirs under Section 8 of the Hindu Succession Act, 1956. He made a reference to the fact that apart from four sons of Kishan Singh including Jagir Singh equivalent share was given to Smt. Haron widow of Kishan Singh. Learned counsel has relied upon the copy of jamabandi for the year 1989-90 Ex.P7 wherein in the ownership column, all the four sons of Kishan Singh alongwith their mother are recorded as owners to the extent of 1/5th share each. He has also drawn attention of the Court to the remark column wherein the reference has been made to mutation No.292 on the death of Kishan Singh. Hence, he submitted that the property left behind by Kishan Singh was succeeded by Class-1 heirs in accordance with Section 8 of the Hindu Succession Act.

On the other hand, learned counsel appearing on behalf of the respondents has submitted that the property is proved to be ancestral coparcenary property and, therefore, the findings of the First Appellate Court

are correct. He further submitted that in case the Court does not agree with his submission, then the case is required to be remitted back as the First Appellate Court has not decided issue No.4-with respect to a written compromise arrived at between the parties which has been proved on file.

Learned First Appellate Court even after referring to the copy of jamabandi for the year 1989-90 noticing that after the death of Kishan Singh, the property had been succeeded under Section 8 of the Hindu Succession Act, returned a finding that the property is continuous to be ancestral coparcenary property. The aforesaid reason given by the learned First Appellate Court is erroneous.

It is by now well settled that once after coming into force of Hindu Succession Act, 1956, property has come in the hands of Class-I heirs by operation of Hindu Succession Act, 1956, the property cannot be thereafter claimed to be ancestral coparcenary property in the hands of heirs. This aspect has been dealt with in detail by Hon'ble the Supreme Court in series of judgments starting from **Commissioner of Wealth Tax, Kanpur and others Vs. Chander Sen and others, (1986) 3 SCC 567** followed by judgment passed by Hon'ble the Supreme Court in case of **Yudhister Vs. Ashok Kumar (1987) 1 SCC 204** and subsequently followed in the case of **Bhanwar Singh Vs. Puran and others (2008) 3 SCC 87** and recently in the case of **Uttam Vs. Saubhag Singh (2016) 4 SCC 68**.

In view of the aforesaid, the finding of the learned First Appellate Court that the property is joint hindu family ancestral coparcenary property is liable to be set aside. However, as rightly contended issue No.4 has not been decided by the learned First Appellate Court. Issue No.4 is

extracted as under:-

“4. Whether the matter has been settled in compromise and writing was made in this respect on 27.12.1993? If so its effect? OPP.”

The compromise/writing dated 27.12.1993 has been proved by examining two attesting witnesses namely PW4 Fauja Singh and PW5 Gajjan Singh. Learned trial Court has ignored the aforesaid writing on the ground that Jagir Singh is not signatory to the aforesaid writing. However, learned First Appellate Court did not choose to discuss and decide this issue. The decision on this issue would have bearing on the merits of the case.

Questions of law as framed earlier are answered in following manner:-

- a) Question Nos.1 and 2 are answered in favour of the appellants.
- b) As regards question No.3, the same is not required to be answered in view of the fact that the property in question is not joint hindu family ancestral coparcenary property.

Accordingly, the present Regular Second Appeal is allowed and the judgment passed by the learned First Appellate Court is set aside. The case is remitted back to the learned First Appellate Court to decide issue No.4 in the appeal in accordance with law.

Parties through their counsel are directed to appear before the First Appellate Court on 29.03.2019.

06.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No