

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

RSA No. 3945 of 2012(O&M)

Date of decision: 17.7.2019

Harmesh Kaur and othersAppellants

VERSUS

Taro and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ramneek Vasudeva, Advocate for the appellants.

Mr. R.N. Moudgil, Advocate for respondents No.1 to 6 & 8.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against judgments and decrees passed by the Courts whereby suit filed by the respondent/plaintiff Harbhajan Singh (since deceased) represented by Taro and others was decreed to the following effect:-

“..... it is concluded that the property held by Sada Ram was Coparcenary Joint Hindu Family Property and as such, plaintiff being its coparcener is hereby declared as co-sharer, owner in the suit land to the extent of 1/5 share, with respect to the property, left by Sada Ram (deceased), at the time of his death, as recorded in Jamabandi (Ex.P1 to Ex.P5).....”

The appeal preferred by Darshan Singh – defendant No.2 (since deceased) represented by his LRs against the judgment and decree passed by the trial Court did not find favour with the Additional District Judge (FTC), Ropar as the Appellate Court dismissed the appeal while affirming findings of the trial Court without variance.

The present litigation is a family feud as children of Sh. Sada Ram son of Shibbu have raised their warring claims in respect of suit land detailed in paras (a) to (f) of head-note of the plaint wherein the respondent/plaintiff Harbhajan Singh son of Sada Ram staked his claim on the premise that suit land is Joint Hindu Family Coparcenary Property of Sh. Sada Ram and plaintiff became entitle to share in the said land to the extent detailed therein being one of the members of the Joint Hindu Family and coparcenary of Sada Ram.

The suit was seriously contested by Darshan Singh – defendant No.2, another son of Sada Ram and he denied the suit land to be Joint Hindu Family or Coparcenary Property of Sada Ram. He raised preliminary objections that the suit is time barred; plaintiff is estopped by his act, conduct and acquiescence from filing the suit; suit is bad for non-joinder of necessary parties and suit has been filed at the instigation of Dilbagh Singh – defendant No.3 who has been really pursuing the litigation. On merits, it is averred that the parties are agriculturists and concept of Joint Hindu Family is unknown to them. They are governed by customary law and not by the Hindu law. The plaintiff is separate in food, residence and agriculture for the last about 20 years from the answering defendant and he has also acquired separate property in village Bhallari since after his marriage. The plaintiff was also separate in food and residence from Sh. Sada Ram during his lifetime. He has vehemently denied that the plaintiff has any right, title or interest in the suit land. At death of Shibbu, father of Sada Ram, mutation was legally and validly sanctioned in the name of Sada Ram and the plaintiff never raised any objection. Sada Ram acquired much of the property in the suit during his

lifetime by making purchases, exchanges and through civil litigation. Sada Ram had also been making sales during his lifetime. It is further averred that Sada Ram executed registered Will dated 22.09.1987 of his entire property in favour of answering defendant. Will executed by Sada Ram is legal, valid and is the result of free disposing mind. The entry in the revenue records with regard to 81/142 share of khasra No.7R/12/1 is legal and valid. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

Defendants No.3 to 5 filed separate written statement and admitted claim of the plaintiff that suit land was ancestral, coparcenary and Joint Hindu Family Property. Plaintiff has wrongly included some khasra numbers in the suit property which are under exclusive ownership and possession of answering defendants and has left to include certain khasra numbers which are also part of Joint Hindu Family Property.

The trial Court framed issues reproduced in para 8 of the judgment. Having heard counsel for the parties in the light of materials on record, the trial Court answered issue No.1 in favour of the plaintiff while issue No.3 in respect of the Will set up by the appellant/defendant No.2 was decided in his favour holding that Darshan Singh has inherited entire property of his parents namely Sada Ram and Bachni by way of testamentary succession and as such Darshan Singh would inherit $\frac{1}{5}^{\text{th}}$ share each of Sada Ram and Bachni i.e. $\frac{2}{5}$ share in addition to his $\frac{1}{5}^{\text{th}}$ share in the suit land whereas the remaining $\frac{2}{5}$ share in suit land would be inherited by plaintiff and defendant No.3 in equal shares i.e. $\frac{1}{5}$ share each and accordingly the suit was partly decreed, noticed hereinbefore.

Counsel for the appellant would fairly inform that the controversy raised in the present appeal is confined to land measuring 29 kanal 8 marlas detailed in para (b) of the plaint which was purchased on the basis of sale deeds Ex.D5, D6 and D8 to D11 in the names of appellant – Darshan Singh and defendant Dilbagh Singh. He further apprises the Court that notice of motion was also issued with regard to land measuring 29 kanal 8 marlas detailed in para (b) of the plaint though the word ‘excluded’ in the order of notice of motion has wrongly been mentioned in place of the word ‘included’. It is argued with vehemence that the respondent/plaintiff has failed to adduce sufficient much less cogent evidence on record that land purchased vide the aforesaid sale deeds in the name of Darshan Singh or Dilbagh Singh or in their joint name was either purchased out of income of coparcenary property in the hands of Sh. Sada Ram or from the income of any Joint Hindu Family Property. It is further argued that even respondent/plaintiff has failed to adduce convincing evidence to establish that Sada Ram and his sons constituted a Joint Hindu Family or the said joint Hindu family owned any property generating income which could be the source of sale consideration paid in respect of purchases made in the years 1976, 1983, 1984 and 1985 vide the aforesaid sale deeds. It is further argued that Darshan Singh was a member of the Armed Forces since 1967 and he retired from Army in the year 2000. He had been sending money to his father and for that reason his father purchased land either in individual name of Darshan Singh or in the joint name of Darshan Singh and Dilbagh Singh.

Counsel representing the respondents, on the contrary, has supported concurrent findings recorded by the Courts with regard to

entitlement of the respondent/plaintiff to 1/5th share in the entire land detailed in paras (a) to (f) of headnote of the plaint. It is argued that despite the appellant having been given 3/5 shares in the entire land, he has still carried the litigation in order to cause harassment to family members of Harbhajan Singh and Dilbagh Singh – defendant No.3. It is further argued that though land measuring 29 kanal 8 marlas, subject matter of sale deeds Ex.D5, D6, D8 to D11, has been purchased in the names of Darshan Singh and Dilbagh Singh but actually the sale consideration was paid by Sh. Sada Ram out of funds generated from the coparcenary property in the hands of Sh. Sada Ram. It is argued that Darshan Singh in his testimony on oath had admitted that his father was not in service and his source of income was agriculture (jimmidara). According to counsel, this statement of Darshan Singh is sufficient to establish that even land measuring 29 kanal 8 marlas was purchased with the funds of Joint Hindu Family Coparcenary Property and as such this land also became Joint Hindu Family Coparcenary Property of Sada Ram and his sons.

I have heard counsel for the parties, perused the paper-book and records.

Before adverting to the submissions made by counsel for the parties, it is appropriate to recapitulate that the litigant who claims a particular property to be Joint Hindu Family or Coparcenary has to establish his plea by leading evidence. The nature of suit property to be Joint Hindu Family Coparcenary Property cannot be decided on the basis of admission made by a contesting party or any other party to the litigation. Equally settled is that unless a property is proved to be Joint Hindu Family or Coparcenary Property, it is to be treated as self-acquired property of its

holder. In the case at hand, the appellant has raised an issue only in respect of land detailed in para (b) which was admittedly purchased vide various sale deeds executed in the year 1976, 1983, 1984 and 1985. Counsel for the respondents has failed to point out any materials on record except a part of statement of Darshan Singh highlighted by him to prove that sale consideration for purchase of land in the name of Darshan Singh or Dilbagh Singh or in their joint name in view of the sale deeds aforesaid was paid out of funds of coparcenary property in the hands of Sh. Sada Ram. Darshan Singh has never stated that sale consideration in respect of land purchased in his name was paid by his father, therefore, statement of Darshan Singh “that only source of income of his father was agricultural land (jimmidara)” by no stretch of imagination can be construed that land purchased vide the aforesaid sale deeds was either purchased from the funds of coparcenary property or the same can be considered to be coparcenary property or Joint Hindu Family Property. Both the Courts have failed to advert to this vital aspect of the matter in respect of property detailed in para (b) of the plaint. Since the respondent/plaintiff has failed to produce materials on record to establish that land measuring 29 kanal 8 marlas was purchased out of the funds of ancestral coparcenary property in the hands of Sh. Sada Ram, findings of the Courts that the land detailed in para (b) is also coparcenary property in which the plaintiff acquired 1/5th share are the result of perversity, thus, cannot be allowed to sustain and are accordingly set aside. As a consequence, land measuring 29 kanal 8 marlas subject matter of sale deeds Ex.D5, D6, D8 to D11 would be ownership of Darshan Singh and Dilbagh Singh as per the sale deeds.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms leaving the parties to bear their own costs. Records of the trial Court be sent back.

JULY 17, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no