

**In the High Court of Punjab and Haryana at Chandigarh**

**Date of Decision: 12.4.2019**

**RSA No. 4143 of 2012(O&M)**

**Paramjit Singh**

**---Appellant**

**versus**

**Rajwinder Singh @ Raju and others**

**---Respondents**

**RSA No. 4550 of 2012(O&M)**

**Paramjit Singh**

**---Appellant**

**versus**

**Rajwinder Singh @ Raju and others**

**---Respondents**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

**Present: Mr. Manish Kumar Singla, Advocate  
for the appellant**

**None for the respondents**

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**Rekha Mittal, J.**

This order will dispose of RSA Nos. 4143 and 4550 of 2012 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No. 4143 of 2012.

The present appeal directs challenge against judgment and decree dated 23.12.2011 passed by the Additional District Judge, Sangrur whereby appeal against judgment and decree dated 20.8.2008 passed by the

Court of Civil Judge (Senior Division), Sangrur (hereinafter referred to as 'the trial court') and cross objection No. 311A dated 17.11.2008 were decided, appeal filed by the plaintiffs-respondents No. 1 to 3 was partly allowed and cross objections preferred by defendants No. 1 to 4 (appellant and respondents No. 4 to 6) were dismissed.

The facts relevant for disposal of present appeal are that respondents No. 1 to 3/plaintiffs claimed declaration, permanent injunction and joint possession to the extent of 8/21 share of respondents No. 1 and 2 and 1/42 share of respondent No. 3 in land, detailed in head note of the plaint on the premise that suit land is joint Hindu family property of Jeon Singh with whom Surjit Kaur, their mother contracted marriage and the respondents were born out of conjugal relationship between Surjit Kaur and Jeon Singh. It is averred that Parsin Kaur respondent No. 6 is the widow of Jeon Singh and out of her wedlock with Jeon Singh, appellant and respondents No. 4 and 5 were born. Parsin Kaur and her children did not have cordial relations with Jeon Singh as Parsin Kaur was keeping family affairs tense. They challenged sale deed No. 1494 dated 16.1.1986 executed by Jeon Singh in favour of defendants No. 1 to 3 in respect of land measuring 12 kanals on the premise that Jeon Singh had no legal necessity to sell the property. They further challenged sale deed No. 1513 dated 11.11.1997 in respect of land measuring 9 kanal 4 marlas executed by defendants No. 1 to 4 in favour of defendants No. 5 to 7 and mutation No. 11503 sanctioned on the basis thereof. It is alleged that suit property measuring 51 kanals 7 marlas is joint Hindu family coparcenary property of plaintiffs No. 1 and 2, defendants No. 1 to 3 and they have birth right in the same. Plaintiffs No. 1 and 2 have 1/3<sup>rd</sup> share in the suit property, defendants

No. 1 to 3 have  $\frac{1}{2}$  share and Jeon Singh had  $\frac{1}{6}$ <sup>th</sup> share. After death of Jeon Singh, plaintiffs and defendant No. 1 to 4 have  $\frac{1}{42}$  share each in that property.

The appellant and his co-defendants No. 2 to 4 filed the written statement seriously contesting plea of the plaintiffs that they are legal heirs of late Jeon Singh with the averment that Surjit Kaur or plaintiffs had no relation with deceased Jeon Singh, father of answering defendants. The suit has been filed with an intention to grab land of answering defendants by misusing process of law. All other material averments of the plaint have been denied with prayer for dismissal of the suit.

The trial court framed issues, reproduced in para 16 of the judgment of said court. The trial court negated plea of the respondents-plaintiffs that suit land is ancestral coparcenary property in the hands of Sh. Jeon Singh or plaintiffs acquired right therein by way of birth. The court also negated contention of the plaintiffs that they are the children of Sh. Jeon Singh. Challenge to sale deed dated 16.1.1986 was also rejected in view of findings recorded in paras 30 and 31 of the judgment. Eventually, suit filed by the plaintiffs-respondents No. 1 to 3 was dismissed, vide judgment and decree dated 20.8.2008.

As has been noticed hereinbefore, appeal preferred by respondents No. 1 to 3/plaintiffs was partly allowed by the first Appellate court with the conclusions, reads thus:-

“In the net result it is held that while defendants No. 5 to 7 have acquired valid title in the suit property on the basis of sale deed executed in their favour in the year 1997 qua properties purchased by them by defendants No. 1 to 3 vide sale deed

dated 16.1.1986, the plaintiffs are entitled to inherit to the estate of Jeon Singh, whatever was left with him, at the time of his death after excluding properties sold by him in the year 1986; to the extent of 1/7<sup>th</sup> share each and the suit is ordered to be decreed *pro tanto* in their favour, in the process the appeal is partly allowed and cross objections are ordered to be dismissed with no order as to costs, in peculiar circumstances of the case.”

Counsel for the appellant would argue that the first Appellate Court grossly erred by relying upon testimony of Surjit Kaur PW3 in order to uphold plea of the respondents-plaintiffs that they were born out of loins of Jeon Singh or Surjit Kaur (since deceased) was married to said Jeon Singh. It is further contended that the Appellate Court failed to correctly appreciate that Surjit Kaur PW3 is not the sister of Jeon Singh rather she is stated to be wife of Gurdev Singh and Surjit Kaur alleged mother of the plaintiffs to be sister of said Gurdev Singh. In addition, it is argued that Surjit Kaur PW3 was partly cross examined on 14.3.2002 and her cross examination was deferred as court time was over. It is argued that the Appellate Court failed to consider that testimony of Surjit Kaur PW3 cannot be taken into consideration as she did not appear in the witness box for her further cross examination subsequent to 14.3.2002.

Another submission made by counsel is that the Appellate Court has relied upon document Ex. P56, statement purported to be made by Smt. Parsin Kaur in previous litigation between defendant Nos. 1 to 3 sued through Smt. Parsin Kaur their mother against Jeon Singh and his brother Satnam Singh. It is vehemently argued that statement marked as Ex. P56

has not been proved in accordance with law and the same has been exhibited in the statement made by counsel for the respondents-plaintiffs in rebuttal evidence. It is further argued that mere exhibiting of a document does not dispense with its proof, in accordance with law, therefore, document Ex. P56 cannot be read into evidence in favour of the respondents-plaintiffs for the purpose of determining their alleged relationship with Jeon Singh, admittedly, father of defendants No. 1 to 3 and husband of Parsin Kaur defendant No. 4.

There is no representation of behalf of the contesting respondents earlier being represented by a counsel despite intimation sent by Registry of the court.

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

As has been noticed by the first Appellate court in para 10 of the judgment, the entire controversy in the present litigation revolves around the question, if the respondents-plaintiffs are the children of Jeon Singh born out of conjugal relationship between Surjit Kaur (since deceased) and Sh. Jeon Singh.

There is no dispute that Sh. Jeon Singh son of Gian Singh was married to Parsin Kaur-defendant No. 4 and out of their wedlock, three sons namely Paramjit Singh (defendant No. 1 -appellant herein), Daljit Singh and Kaka Singh respondents No. 4 and 5 were born. Perusal of judgment of the first Appellate Court reveals that the Appellate Court has placed heavy reliance upon testimony of Surjit Kaur PW3 to accept plea of the plaintiffs with regard to their relationship with Jeon Singh. The Appellate Court in para 11 of the judgment, in opening line, has mentioned that Surjit Kaur

PW3, a sister of Jeon Singh, has lent corroboration to case of the plaintiffs by testifying that Jeon Singh had married Surjit Kaur by way of Anand karaj ceremony and procreated the plaintiffs from this wedlock.

On plain but careful reading of statement of Surjit Kaur PW3 leaves no manner of doubt that Surjit Kaur PW3 has never claimed herself to be sister of Jeon Singh. On the contrary, she had stated that Surjit Kaur who was married to Jeon Singh was her 'nanad' meaning thereby that Surjit Kaur was the sister of husband of Surjit Kaur PW3. Observations of the first Appellate court that Surjit Kaur PW3 is the sister of Jeon Singh is the result of misreading of evidence. Surjit Kaur PW3 was cross examined partly on 14.3.2002. A careful reading of her cross examination would reveal that she did not have knowledge about various facts which such a close relative is ordinarily expected to know. Not only this, Surjit Kaur PW3 did not appear in the witness box for further cross examination, therefore, her testimony cannot be looked into for any purpose whatever. The Appellate Court did not bother to consider that since Surjit Kaur PW3 did not cause appearance for her further cross examination and her statement was left incomplete and as such, no reliance can be placed upon her testimony much less to lend corroboration to plea of the plaintiffs with regard to their relationship with Sh. Jeon Singh. No sooner, testimony of Surjit Kaur PW3 is taken out of consideration, there is hardly any evidence on record to prove relationship of plaintiffs with Sh. Jeon Singh.

The Appellate Court, in para 16, has made reference to Civil Suit No. 260 dated 17.7.1982 titled “ Paramjit Singh vs. Jeon Singh and others” decided on 16.5.1984 and documents Ex. P12, P13 and P56 from the record of said civil suit. In the succeeding para, it has been mentioned

that the trial court went by presumption under Section 50 of the Indian Evidence act and admission of Parsin Kaur in the plaint and statement made before the court of law. Later in para 20, the court has held that what finally seals fate of this aspect of the case is admission of Parsin Kaur herself in Exs. P12 and P13 wherein she proclaimed that Jeon Singh was carrying on with another woman and has three children from her.

Perusal of document Ex. P12, copy of plaint in civil Suit No. 260 dated 17.7.1982 titled "Paramjit Singh vs. Jeon Singh and others" makes it evident that no such averment has been made in the plaint that Jeon Singh defendant No. 1 therein was carrying on with another woman and has three children from her. Document Ex. P13 is the vakalatnama given by Parsin Kaur in favour of Sh. Vinod Kumar Jain, Advocate. It is extremely strange that the Appellate Court, for the reasons best known totally misread the materials on record with a clear zeal and effort to accept plea of the plaintiffs that they are children of Sh. Jeon Singh.

So far as document Ex. P56, certified copy of statement of Parsin Kaur in civil suit No. 260 dated 17.7.1982, the said statement was marked as Z/1 in statement made by counsel for the plaintiffs/respondents on 27.10.2005 and the same was later exhibited as P56 again in the statement of counsel for the plaintiffs-respondents recorded on 28.7.2008 when the case was pending for rebuttal evidence by the respondents-plaintiffs. As has been rightly argued by counsel for the appellant that mere exhibiting of a document will not dispense with its proof in accordance with law. The respondents-plaintiffs did not examine a witness to prove certified copy of statement marked as Ex. P56 on the basis of original records of civil suit No. 260 dated 17.7.1982. As the respondents-plaintiffs did not prove

document Ex. P56, in accordance with law, reliance upon document Ex. P56 to accept plea of the respondents-plaintiffs is highly misplaced and the result of perversity. In view of the above, neither statement of Surjit Kaur PW3 nor the document Ex. P56 can be considered for the purpose of deciding the aforesaid question of relationship of the plaintiffs with Jeon Singh. This apart, in the statement Ex. P56, a relevant extract in this context (translated in English from Punjabi), reads as follows:-

“Jeon Singh has enticed a woman (*ik Janani Magar laa rakhi hai*) and she has three children.”

A plain but careful reading of the aforesaid extract does not lead to an inference that Parsin Kaur either admitted that alleged Surjit Kaur was living with Jeon Singh much less that plaintiffs were born out of loins of Jeon Singh. Analyzed from any angle, the Appellate Court committed a gross error by holding in favour of the respondents-plaintiffs by relying upon testimony of Surjit Kaur PW3 and document Ex.P56. No sooner the aforesaid materials are taken out of consideration, there is no evidence much less cogent and convincing to sustain findings of the Appellate Court qua the aforesaid question. Accordingly, findings of the Appellate Court in this regard are set aside being erroneous rather perverse. As a natural consequence, findings recorded by the Appellate Court holding the respondents-plaintiffs to be entitle to 1/7<sup>th</sup> share each in land left behind by Sh. Jeon Singh cannot be allowed to sustain and accordingly set aside.

In view of what has been discussed hereinbefore, the appeals are allowed. The judgment and decree passed by the first Appellate Court partly allowing appeal of the plaintiffs-respondents is set aside. As a

natural corollary, suit filed by the respondents-plaintiffs is dismissed with costs throughout.

**(Rekha Mittal)**  
**Judge**

**12.4.2019**

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No