

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

RSA-966-2013(O&M)

Date of decision:-1.4.2019

Gagandeep Singh

...Appellant

Versus

Jasvir Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.V.K. Sandhir, Advocate
for the appellant.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Gagandeep Singh, aged about 6 years, minor son of Harpreet Singh son of Ajit Singh son of Kartar Singh, resident of village Dialbgarh, Tehsil and District Sangrur, presently residing at village Bhikhi under guardianship of his mother Smt.Baljinder Kaur, had filed a suit against defendants i.e. S/Sh. Jasvir Singh, Gurbinder Singh, Harpreet Singh sons of Ajit Singh as well as Ajit Singh craving for relief of possession and permanent injunction on the assertions that the suit land to the extent of 1/2 share in total land measuring 216 kanals 19 marlas is joint Hindu family ancestral coparcenary property of the plaintiff and the defendants since they constitute a joint Hindu family and the plaintiff acquired an interest in

such property by virtue of his birth in the family; that as per Hindu law, such type of property cannot be disposed of without the legal necessity; that defendant No.4 had allegedly suffered a decree regarding that land in favour of defendants No.1 and 2 on 20.9.1990. According to the plaintiff, the said decree is forged, fabricated and is result of connivance between the parties; that the same is without consideration and without any legal necessity; that the said impugned decree was executed in order to defeat the rights of the plaintiff in the joint Hindu family property and to commit fraud with him, therefore such impugned judgment and decree as well as the mutation No.1592 sanctioned on the basis thereof are illegal, null and void. Feeling aggrieved by the same, when the defendants refused to admit his claim, the plaintiff had brought the suit in question.

Notice of the suit was given to the defendants, who put in appearance. Defendants No.1 and 2 filed a joint written statement contesting the suit raising legal objections that the same was not maintainable; that the plaintiff had no locus standi to file the suit; that the plaintiff had concealed true facts and had not come to the Court with clean hands; that suit was time barred. On merits, the answering defendants controverted the assertions in the plaint contending that earlier Sh.Kartar Singh was the owner of the suit land and he had executed a Will in favour of his son Sh.Ajit Singh – defendant No.4 by virtue of which the latter became owner of the land in question and mutation was sanctioned in his favour; that Sh.Gagandeep Singh was not member of the joint Hindu family at the time of decree dated 20.9.1990, so he had not acquired any right in the property at that time by virtue of his birth on 8.9.1998.

Refuting the remaining allegations, such defendants prayed for dismissal of the suit.

Defendants No.3 and 4 in the separate written statement filed by them had also taken various legal objections and on merits controverted the assertions in the plaint.

In the end, such defendants also prayed for dismissal of the suit.

On pleadings of the parties, following issues were framed:

1. Whether $\frac{1}{2}$ share of 216 kanal 19 marlas of the disputed property as in the head note of the plaint is joint Hindu family property of the plaintiff and defendants? OPP.
2. Whether the plaintiff and defendants are coparceners and members of Joint Hindu family? OPP.
3. Whether the plaintiff had any birth right in the suit property? OPP.
4. Whether the decree suffered by defendant no.4 in favour of the defendants no.1 and 2 on 20.9.1990 is forged and fabricated document? OPP.
5. Whether the plaintiff is entitled to decree for joint possession & declaration as prayed for? OPP.
6. Whether the suit is not maintainable in the present form? OPD.
7. Whether the plaintiff has no locus standi to file the present suit? OPD.
8. Whether the plaintiff has not come to the court with clean hands, if so its effect? OPD.
9. Whether the suit is within time? OPP.

10.Relief.

In order to prove his case, the plaintiff had examined Sh.Karnail Singh as PW1, Smt.Baljinder Kaur as PW2, Sh.Nazar Singh as PW3, Sh.Pritpal Singh as PW4 besides tendering some documents.

On the other hand, defendant No.1 Jasvir Singh got his statement recorded as DW1 and defendant No.3 Harpreet Singh got his statement recorded as DW2.

In rebuttal, the plaintiff examined Sh.Ram Dial, Patwar Moharriar as PW5.

After hearing learned counsel for the parties, the trial Court decided issues No.1 to 3 against the plaintiff, issues No.4 and 5 against the plaintiff, issues No.6, 7 and 8 against the defendants, issue No.9 against the plaintiff. Resultantly, suit of the plaintiff was dismissed. This was so done vide judgment and decree dated 10.8.2009.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Sangrur which was assigned to Additional District Judge, Sangrur, who vide judgment and decree dated 7.11.2012 dismissed the same affirming the judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, resultantly the impugned judgments and decrees passed by the Courts below be set aside and suit of the plaintiff be decreed.

Notice of the appeal was issued to respondents. However,

they did not appear to contest the same.

I have heard learned counsel for the appellant besides going through the records and I find that there is no merit in the appeal.

Both the Courts below by proper appraisal of evidence and correct interpretation of law by giving detailed reasoning have come to the conclusion that the land held by Kartar Singh was not having nature of ancestral coparcenary property, rather as is evident from excerpts placed on file by the plaintiff Ex.P19, Kartar Singh had inherited the property from his uncle's son Chatar Singh and not from his father Jeeva Singh and mutation in that regard was duly sanctioned, whereas Ajit Singh had received the said property on the basis of Will, therefore, transfer by Kartar Singh in favour of Ajit Singh was with respect to his self acquired property and it did not attain nature of ancestral coparcenary property. Ajit Singh had transferred the property by means of impugned decree in favour of Jasvir Singh and Gurvinder Singh and therefore no fault can be found with the same. The Courts below have found that Ajit Singh was competent to suffer that decree in favour of Jasvir Singh and Gurvinder Singh, therefore, decree dated 20.9.1990 Ex.P8 is not liable to be set aside on any score. It has also been observed that the impugned decree having been passed on 20.9.1990 with mutation having been sanctioned on the basis thereof on that very day, the suit was filed on 26.5.2004 much beyond the period of limitation of three years, as such it was time barred. It was further observed that since the nature of property was not Hindu family ancestral coparcenary, the plaintiff did not acquire any interest in it by reason of his birth in the family and had no locus standi to bring the

suit. Furthermore, as has been rightly observed by the First Appellate Court, the plaintiff-appellant is grandson of Ajit Singh and when father and grandfather are alive, then such type of suit cannot be filed by the grandson seeking joint possession and further plaintiff, who was not born at the time when the impugned decree was passed and not even conceived could not possibly challenge the impugned decree. With regard to allegations of fraud etc., the plaintiff had failed to establish those allegations by leading a cogent and convincing evidence.

I do not see any reason to disagree with the concurrent findings recorded by the Courts below.

No substantial question of law arises in this appeal.

The appeal stands dismissed accordingly.

1.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No