

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.1988 of 2015 (O&M)  
Date of Order:21<sup>st</sup> February, 2019

Birinder Singh and another  
Versus  
Rabinder Singh and others

...Appellants  
...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

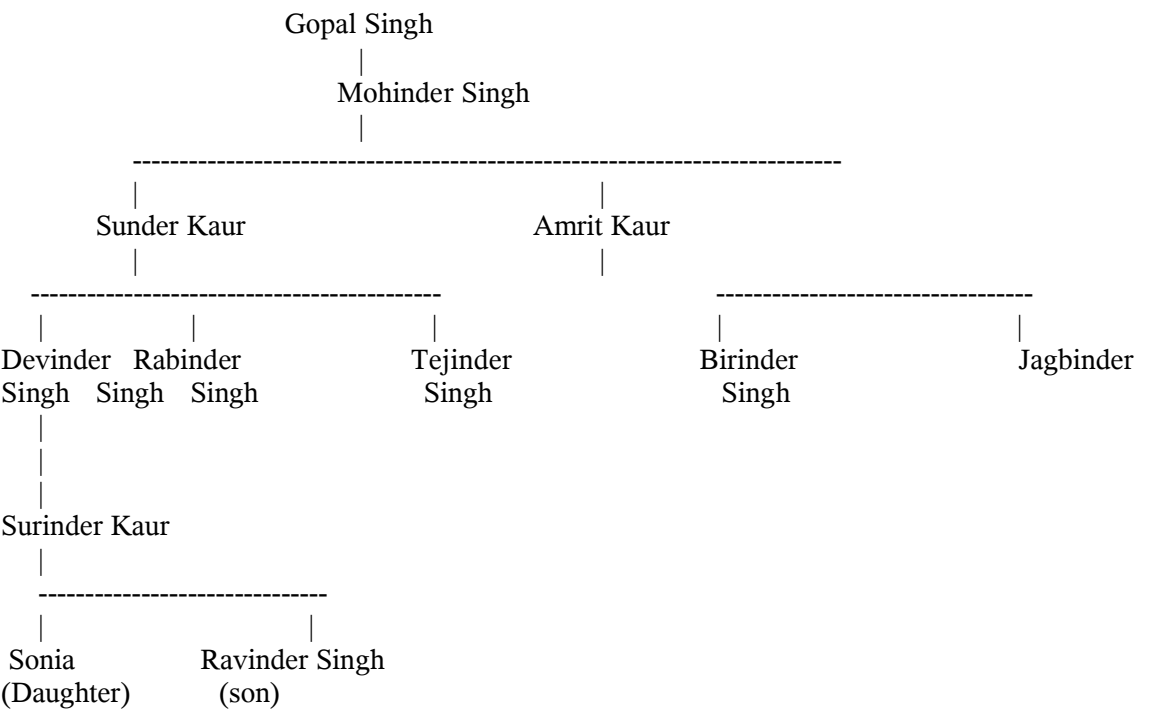
Present: Mr. Chetan Mittal, Senior Advocate, with  
Mr. R.S.Randhawa, Advocate,  
for the appellants.

Mr. S.S.Swaich, Advocate,  
for the respondents.

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in the regular second appeal against the judgment and decree passed by the learned first appellate court while reversing the judgment of the trial court.

In order to understand inter-se relationship between the parties to the litigation, it would be appropriate to draw a pedigree table.



Plaintiffs i.e. Birinder Singh and Jagbinder Singh who are sons of Mohinder Singh from Smt. Amrit Kaur had filed a suit claiming declaration and decree for permanent injunction to the effect that they are owners in possession of 1/3<sup>rd</sup> share of the property detailed in the plaint. Plaintiffs also claim that gift deeds executed by their father in favour of Rabinder Singh, defendant no.1 on 05.03.1999 (two gift deeds) and 10.03.1999 (one gift deed) in favour of Tejinder Kaur does not effect their rights. Plaintiffs also sought declaration that the sale deed executed by their father Mohinder Singh on 13.05.1997 is also illegal, null and void, having no effects on the rights of the plaintiffs. Plaintiffs also sought decree for permanent injunction restraining the defendants from interfering or caused to interfere in the peaceful possession of the plaintiffs over the property and further restrained defendant no.1 from alienating the suit property.

Detailed facts have already been noticed by both the courts below, however, to complete narration, certain important facts are being noticed.

Plaintiffs have as noted above filed the suit claiming that the suit property in the hands of their father was Joint Hindu Family Ancestral Coparcenary property and therefore they have right by birth and their father Mohinder Singh had no right to transfer the property by executing various gif deeds and sale deeds.

The suit was contested by the defendants pleading that the property in dispute is individual property of late Sh. Mohinder Singh and therefore he had right to alienate the property in any manner whatsoever. It was further pleaded that the plaintiffs have already lost in as many as five suits with respect to the property in dispute and therefore, their assertion

with regard to property being Joint Hindu Family Ancestral Coparcenary property is hit by rule of resjudicata.

This court has heard learned counsels for the parties and with their able assistance gone through the judgments passed by the courts below and the voluminous record.

Basically learned senior counsel for the appellants has made his submission on two issues:-

- (1) *That the suit property is a Joint Hindu Family Ancestral Coparcenary property;*
- (2) *The suit filed by the plaintiffs is not barred by rule of resjudicata.*

Learned senior counsel appearing for the appellants has submitted that father of late Sh. Mohinder Singh came from the area which now form part of Pakistan in 1941 and after taking the land in question on lease set up an Oil Mill. Mohinder Singh has admitted that he was without work for certain period and used to assist his father in the business of Oil Mill and hence, entire property is Joint Hindu Family Ancestral Coparcenary property. The property purchased by Mohinder Singh in village Jaidevpur, District Haldwani was purchased from nucleus of joint Hindu Family property and therefore, property purchased is also Joint Hindu Family coparcenary property. The property at village Jaidevpur was in the name of Mohinder Singh and his wife Amrit Kaur and thereafter there was an agreement and Amrit Kaur transferred the property of her share in favour of plaintiffs. Thereafter, Mohinder Singh sold not only his own share but also share of her minor sons i.e. the plaintiffs and the amount was utilized by showing that certain amount has been taken as loan by Mohinder

Singh from the plaintiffs and the suit property was purchased. Hence, he submitted that the suit property is Joint Hindu Family Ancestral Coparcenary property. The rule of resjudicata would not be applicable as the previous suits were only for permanent injunction and hence, the issue which has been framed in the aforesaid suits even with regard to property being Joint Hindu Family Coparcenary property and decision thereon, would not operate as resjudicata as those issues were not directly and substantially in issue in the aforesaid litigation

On the other hand, learned counsel appearing for the respondents has submitted that the question whether the property is Joint Hindu Family Ancestral Coparcenary property cannot be permitted to raise being hit by rule of resjudicata and therefore, the plaintiffs-appellants cannot be permitted to re-agitate the matter.

Let's now analyse the contentions of learned counsel for the appellants.

With respect to first argument, it may be noted that Mohinder Singh had appeared in a suit titled as Barinder Singh vs. Mohinder Singh. Birinder Singh is same as Barinder Singh. In the aforesaid statement, Mohinder Singh had stated that he is doing business and agriculture work from very beginning. He has further stated that their family did not own any property in Pakistan and hence, he did not inherit any property from his father. He has purchased the land in village Jaidevpur District Haldwani with his own income and he did not spend any money from the Joint family fund. He has given detail of the manner in which he purchased the property in village Jaidevpur in 1952. It is further stated that his father was not allotted any property in lieu of the property left in Pakistan because their

family was not owner of any property in the area which now forms part of Pakistan. He has further stated that he started his business in the year 1942-43 at Khanna. In these circumstances, arguments of learned counsel that Mohinder Singh was not doing any work is not correct. Learned senior counsel has tried to read few lines in isolation from the entire statement. In the considered view of this court, the evidence of a witness cannot be read in a manner which is being suggested by learned senior counsel. The statement of a witness has to be read in entirety to come to a conclusion. In the present case, there is overwhelming evidence to the effect that Mohinder Singh purchased the property in dispute from Bakhtawar Singh for a consideration of Rs.25,000/-. Learned senior counsel has made extensive reference to the order passed by appellate authority under the Income Tax Act. It may be noted that the aforesaid document is only a typed copy of order passed by the appellate authority. Neither it is original nor it is a photocopy. Still further, no effort has been made by the plaintiffs to prove the aforesaid order. When it was tendered in evidence, objection was raised by counsel for the defendants. Still no effort was made to prove. In any case, order passed by the appellate authority against the order of assessment does not determine finally as to whether the property is Joint Hindu Family Coparcenary property or not.

From the reading of the order passed by the appellate authority also refused to grant any deduction on account of payment of interest to the son with reference to Income Tax Act. Hence, such order does not advance the case of the Plaintiffs. This document has been tendered in evidence by a friend DW1 Pritam Singh Bedi, who claims that this document was handed over to him by Mohinder Singh. A document

which has been produced in evidence has to be proved. Mere exhibition of the document does not mean that the document has been proved in evidence. Exhibiting of a document in evidence is entirely different than the evidence to prove such document. Learned first appellate court has recorded detailed reasons to hold that the suit property is not Joint Hindu Family Coparcenary property. This court does not find any good reason to interfere with the aforesaid finding.

As regards second argument of learned senior counsel for the appellant, it may be noted that in between the parties there has been five previous civil suits. Out of those five civil suits, four civil suits were for grant of decree of permanent injunction. But in all these four civil suits, question of property being Joint Hindu Family Coparcenary property was raised and subject matter of a separate issue in each of the suit and thereafter decided not only by the trial court but even by the first appellate court respectively. In most of the civil suits, either the plaintiffs were parties. Details of the suits have been given by the first appellate court, correctness whereof is not disputed. There was another suit filed for possession by Mohinder Singh against the plaintiffs-appellants. In the aforesaid suit also, although, there was no direct issue on the property being Joint Hindu Family Coparcenary property, however, issue no.1 was comprehensive and in para 8 of the judgment, learned trial court dealt with this respect and recorded the finding that the property is not Joint Hindu Family Coparcenary property. The argument of learned senior counsel that the suits are only for permanent injunction is also not correct. The suits were not simpliciter suits for permanent injunction. There was inbuilt relief of declaration sought for in each of the suit and almost in all the suits issue

with regard to property being Joint Hindu Family Ancestral Coparcenary property was examined and thereafter decided. Parties led evidence and after examining the evidence the courts decided the aforesaid issue. Hence, the previous suits cannot be said to be mere injunction suits.

Learned first appellate court has correctly held that the learned trial court erred in relying heavily upon the order passed by the Income Tax Authority. The learned first appellate court has further held that the learned trial court has erred in returning a finding that the findings in the previous judgments would not operate as resjudicata. It may be further noted that when the litigation was pending in the trial court, four regular second appeals against the judgments in the suits filed were pending, but all the four appeals have already been withdrawn. Hence, the judgments and decrees passed by the courts in the previous suit have become final.

In view of the aforesaid, there is no ground to interfere with the judgment passed by the learned first appellate court.

The regular second appeal is dismissed.

**21<sup>st</sup> February, 2019**  
**nt**

**(ANIL KSHETARPAL)**  
**JUDGE**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No