

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.3771 of 2015 (O&M)

Date of Decision:08.02.2019

Jagsir Singh and others

...Appellant(s)

Versus

Karam Singh and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.J.S.Brar, Advocate for the appellants.
Mr.I.S.Brar, Advocate for the respondents.

ANIL KSHETARPAL, J.

CM-9248-C-2015

For the reasons stated in the application, which is supported by an affidavit, delay of 24 days in refiling the appeal is condoned.

CM stands disposed of.

Main appeal

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Question which requires consideration is “whether after number of suits acknowledging family settlements and the property having been inherited under Section 8 of the Hindu Succession Act, 1956 (for short ‘the Act of 1956), can the property be claimed to be ancestral coparcenary property or not”?

Ram Singh was common ancestor of the parties. He was owner of 213 kanals and 15 marla of land. On his death the property was succeeded by Class-I heirs under Section 8 of the Act of 1956. He was

having one son and two daughters who became owner of 1/3rd share each in the land measuring 213 kanal and 15 marla. Thereafter Bhagwanti, the sister of Dhana Singh, while acknowledging a family settlement, admitted Arjan Singh, who was son of Dhana Singh to be owner of 23 kanal and 19 marla of land, vide judgment and decree dated 16.03.1985. Thereafter Rattan Kaur, another sister of Dhana Singh (daughter of Ram Singh), also acknowledged the family settlement and it was declared vide judgment and decree dated 06.05.1985 that the property inherited by Rattan Kaur being 1/3rd share of 213 kanal and 15 marla which was mutated in her favour also belongs to Dhana Singh. Thereafter on the basis of family settlement, Dhana Singh acknowledged Gurditta Singh son of Karnail Singh (pre-deceased son of Dhana Singh) as owner in possession of land measuring 71 kanal and 4 marla vide judgment and decree dated 8.4.1985. Dhana Singh had died on 5.5.1990 (some where the date of death has come as 15.5.1990). After the death of Dhana Singh, the property was again succeeded under Section 8 of the Act of 1956 in favour of Class-I heirs including widow of Karnail Singh i.e. pre-deceased son of Dhana Singh. Some property came to be transferred by way of family settlement in favour of the plaintiff Karam Singh as well as Gurditta Singh by Bhagwanti, the sister of Dhana Singh, vide same judgment and decree dated 16.3.1985 through which the property was also acknowledged in favour of Arjan Singh, who was having two wives, first one was Jagir Kaur and second one was Balbir Kaur. From first wife i.e. Jagir Kaur, Karam Singh-plaintiff was born, whereas from second wife, i.e. Balbir Kaur, the defendants-appellants were born.

It is also an allegation of the defendant-appellant that Arjan Singh also purchased certain property in the name of Karam Singh.

Arjan Singh during his life time transferred the property held by him, i.e. 92 kanal and 10 marla in favour of his son Jagsir Singh vide transfer deed dated 31.8.2006. The plaintiff claims that this transfer deed is illegal being without legal necessity and, therefore, the plaintiff is owner to the extent of 36 kanal and 2 marla.

Both the courts after recording a finding that the land to the extent of 35 kanal and 10 marla is ancestral coparcenary property in the hands of Arjan singh and the transfer is not for legal necessity to the extent of 35 kanal and 10 marla.

This Court has heard the learned counsel for the parties and with their able assistance gone through the judgments passed by the courts below and photocopy of record produced by the learned counsel for the parties, correctness whereof is not disputed.

It is apparent that right from Ram Singh, who was common ancestor of the parties, succession whenever opened, the property fell to the heir under Section 8 of the Act of 1956 and the property was transferred in favour of heirs mentioned in the Schedule attached to the Act of 1956 including females. In the Mitakshara law, before amendment in the year 2005 females were not members of the coparcenary body. Hence, coparcenary existed. Secondly property inherited by a legal heir under Section 8 of the Act of 1956 is exclusive property and not coparcenary. 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 these circumstances, both the courts clearly erred in recording a finding that the property is coparcenary ancestral property. Still further it has come in the evidence that Karam Singh is owner to the extent of 15 acres of land, whereas defendant Jagsir Singh, by virtue of this transfer which has been challenged, becomes owner of 16 acres of land.

Still further the entire property of the family including the property which has been come through the judgment and decree is mixed and inseparable. In such circumstances, once the coparcenary property has not been separately identified, no relief could be granted to the plaintiffs.

In view of the above, the Regular Second Appeal is allowed. The judgments and decrees passed by the courts below are set aside. Pending application(s), if any, shall also stand disposed of, in terms thereof.

08.02.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No