

In the High Court of Punjab and Haryana at Chandigarh

RSA- 5578 of 2014(O&M)

Date of Decision:1.4.2019

Charanjit Kaur and another

---Appellants

vs.

Jaswant Kaur and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Abhinav Sood, Advocate
for Mr. Vikram Singh, Advocate
for the appellants

Mr. S.S.Dinarpur, Advocate
for respondent No. 1

Rekha Mittal, J.

The present appeal has been directed against concurrent findings recorded by the courts whereby suit for declaration filed by the appellants claiming right to the extent of half share in land measuring 33 bigha 2 biswas, detailed in para 1 (unnumbered) of the judgment passed by trial court was dismissed vide judgment and decree dated 24.11.2011 and appeal preferred by unsuccessful plaintiffs-appellants did not find favour with the Additional District Judge, Ambala.

The appellants are the grand daughters of Mehar Singh being daughters of Raghbir Singh pre-deceased son of said Mehar Singh. They staked claim in the suit property on the premise that the same was ancestral joint Hindu family property in the hands of Mehar Singh, therefore, Mehar

Singh was not competent to suffer collusive judgment and decree dated 2.2.2000/28.3.2000 passed in Civil Suit No. 302 of 1999 by the Civil Judge (Junior Division), Ambala. They sought to assail the aforesaid judgment and decree, registration of said decree vide deed No. 5066 dated 10.12.2001 and mutation on its basis bearing No. 302 dated 5.4.2002 on the grounds that the same are wrong, against law and facts and is not binding upon rights of the plaintiffs-appellants. They also sought injunction restraining the respondents from interfering in share of the plaintiffs.

The suit filed by the plaintiffs was seriously contested by the respondents-defendants. They raised preliminary objections regarding limitation; locus standi; cause of action; non-maintainability of the suit in the present form; concealment of material facts and bad for want of proper court fee. However, relationship of plaintiffs with defendants being daughters of late Raghbir Singh has not been disputed. They denied the allegations that suit land was ancestral joint Hindu family property in the hands of Sh. Mehar Singh with the averment that the same was self-acquired property of defendant No. 2. It is averred that after death of Raghbir Singh and re-marriage of Gurmel Kaur, they lost their right in the suit property. They denied the allegations on the basis whereof the plaintiffs have challenged the judgment and decree dated 2.2.2000/28.3.2000, registration of the said decree and mutation sanctioned on the basis thereof.

The trial court framed issues, reproduced in para 4 of the judgment of said court. The parties were permitted to adduce evidence. Having heard counsel for the parties in the light of materials on record, trial court negated plea of the plaintiffs-appellants that the suit property was

ancestral or joint Hindu family property in the hand of Sh. Mehar Singh and even their challenge to the judgment and decree aforesaid was also rejected. As has been noticed hereinbefore, the court in appeal affirmed findings of the trial court without any variance by dismissing the appeal preferred by unsuccessful appellants-plaintiffs.

Counsel for the appellants has failed to point out any materials on record that the suit land in the hands of Sh. Mehar Singh was ancestral coparcenary property in which their father late Sh. Raghbir Singh son of Mehar Singh acquired right by way of birth being one of the coparceners. He has also failed to advance any arguments much less convincing that suit land was joint Hindu family property of Mehar Singh and Raghbir Singh of which Sh. Mehar Singh was the 'karta'. That being so, findings of the courts with regard to nature of suit property are liable to be affirmed. I would hasten to add that as per settled position in law every property is deemed to be self-acquired property of the holder unless proved otherwise.

This brings the court to challenge against the judgment and decree dated 2.2.2000/28.3.2000 passed in Civil Suit title “Jaswant Kaur vs. Mehar Singh”. As per averments raised in the said suit by Smt. Jaswant Kaur, admittedly, daughter of Mehar Singh, the suit property was self-acquired property of Mehar Singh and there was a family settlement under which the suit property was given by Sh. Mehar Singh to Jaswant Kaur. The said decree was later registered vide deed No. 5066 dated 10.12.2001.

Counsel for the appellants would argue that the judgment and decree passed in favour of Smt. Jaswant Kaur is the result of fraud, therefore, cannot be allowed to sustain. To bring home his contention, it is

argued that in the statement recorded by Mehar Singh in the said proceedings, he has incorrectly stated that his son late Raghbir Singh was not married. It is argued that had Mehar Singh brought this fact to notice of the court that passed the decree in favour of Jaswant Kaur that Raghbir Singh was married and had two daughters (appellants herein), the court might have insisted for impleading the appellants as a party in the said litigation and ultimately fate of the earlier litigation would have been different. In addition, it is argued that even in the plaint filed by Jaswant Kaur, there is no reference that she had a brother namely Raghbir Singh who passed away leaving behind his family consisting of his widow and two daughters.

Counsel representing the respondents while refuting contention of the appellants would argue that plea of the appellants with regard to their entitlement to a share in the suit land being ancestral joint Hindu family property has been negatived throughout meaning thereby that the appellants had no right in the land of Sh. Mehar Singh when said Mehar Singh suffered a decree in favour of Jaswant Kaur, his daughter. It is further argued that since the appellants did not have any right in the property of Mehar Singh during his life time, the appellants have no locus to challenge the judgment and decree passed in the earlier litigation in favour of Smt. Jaswant Kaur.

Another submission made by counsel is that if Sh. Mehar Singh was not competent to challenge the said judgment and decree on the premise that he had wrongly got recorded the factum of Raghbir Singh being unmarried in his statement recorded on 2.2.2000 in the earlier suit, the appellants cannot be heard to say that the judgment and decree impugned is

the result of fraud or liable to be set aside on the ground put forth by counsel for the appellants.

Counsel for the respondents is right in his submission that no sooner plea of the appellants with regard to suit land being ancestral joint Hindu family property is rejected, they had no right in the property of Sh. Mehar Singh till he was alive. As the appellants did not have any right in the suit land during life time of Mehar Singh, they cannot be permitted to find fault with the earlier proceedings wherein a consent decree was passed on statement made by owner of the land. Counsel for the appellants has failed to point out that any allegations constituting fraud can be attributed to Smt. Jaswant Kaur decree holder who claimed right in the suit land on the basis of family settlement and the decree was later got registered. If Mehar Singh could not get the said judgment and decree set aside by taking advantage of his wrong statement, how can the appellants be heard to say that the said judgment and decree is liable to be set aside on that ground. In this view of the matter, I find myself unable to accept contentions of the appellants that consistent findings recorded by the courts suffer from an error much less perversity as would call for intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

1.4.2019
paramjit

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