

In the High Court for the States of Punjab and Haryana at Chandigarh

RSA-4490-2017 (O&M)
Date of Decision: May 16, 2019

Meet Singh and another

... Appellants

Versus

Bhisham Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Bhardhwaj, Advocate,
for the appellants.

Amit Rawal, J. (Oral)

Present regular second appeal is directed against the judgment and decree of the Lower Appellate Court whereby suit of the appellants-plaintiffs decreed by the trial Court, has been dismissed.

The plaintiffs in suit claimed right in three properties situated in Village Lalru, Jastna Khurd and Ballopur, Tehsil Dera Bassi, District Mohali being a joint Hindu Family Coparcenary Properties of plaintiffs and defendant no.1 by challenging the registered transfer of ownership deed dated 02.11.2006 executed by defendant no.2-Gurdial Singh, father of the plaintiffs, in favour of defendant no.1 vide vasika No. 5285 in respect of land measuring 5 Bighas 6 Biswas out of total land measuring 39 Bighas and 14 Biswas in respect of land of Village Lalru and alienation made by defendant no.2 in favour of defendant no.3 in respect of of ancestral house in Village Jastana Khurd to be null and void, with an injunction seeking restraint from alienating the suit land to the extent of 2/5 share of plaintiffs.

It was alleged that plaintiffs and defendant no.1 are the sons of defendant no.2 – Gurdial Singh and Ajmer Kaur widow of Gurdial Singh – proforma defendant. Ratti Ram, father of defendant no.2 and grand father of the plaintiffs and defendant no.1 was having ancestral land at Village Ballopur, Lalru and Jastana Khurd as detailed in the head note of plaint and after his death, land situated in the afore-mentioned three villages was inherited in equal share of six sons, namely, Sardara Singh, Gurdial Singh, Hazara Singh, Gulzar Singh, Sher Singh and Hari Krishan and mutation in this respect was also sanctioned. In the land measuring 39 Bighas 14 Biswas situated in Village Lalru, Ratti Ram was having 1/5 share and after his death, his 1/5th share was inherited in equal shares by his aforesaid six sons. In other words, defendant no.2 – Gurdial Singh got 1 Bighas and 6-1/2 Bighas in aforementioned land. Defendant no.2 exchanged his share of ancestral land situated in Village Ballopur and Jastana Khurd with his brothers Hazara Singh, Gulzar Singh and Sher Singh and in turn got their shares in the land measuring 39 Bighas 14 Biswas situated at Village Lalru. In this manner, defendant no.2 – Gurdial Singh became owner in possession of 6 Bighas 6 Biswas of land after receiving the share of afore-mentioned three brothers. Defendant no.2 was not competent to alienate the suit land otherwise than for legal necessity or for welfare of the estate. The land situated in Village Ballopur and Jastana Khurd were the joint Hindu family coparcenary property and the same were inherited by defendant no.2 from his father and forefathers by way of natural succession in which plaintiffs being the coparceners and sons of defendant no.2 and grand sons of Ratti Ram, were having share by birth. Defendant no.1 in collusion with defendant no.2 obtained transfer of ownership deed executed in his favour

on 02.11.2006 vide Vasika No. 5285 in respect of the land measuring 5 Bighas 6 Biswas out of total land measuring 39 Bighas and 14 Biswas by giving transaction of the entire property.

Defendants opposed the suit and filed written statement by raising objections qua maintainability, locus standi etc. It was alleged that property of Ratti Ram was self acquired property and not ancestral. Some portion of the land situated at Village Jastana Khurd came through mutation from father of defendant no.2 – Ratti Ram. It was also alleged that said land was purchased by defendant no.2 through sale deeds fully described in the jamabandi for the year 1975-76 produced by plaintiffs. Ratti Ram was not owner of the land measuring 39 Bighas 14 Biswas and therefore, defendant no.2 was competent to exchange the same or execute any deed in favour of the person of his choice.

Trial Court, on the pleadings of parties, framed following issues:-

- “1. Whether the plaintiffs are entitled to the declaration as prayed for? OPP
2. Whether the plaintiffs are entitled to the permanent injunction as prayed for? OPP
3. Whether the plaintiffs are entitled to the joint possession of the suit land as prayed for? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiffs have no locus standi to file the present suit? OPD
6. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
7. Relief.”

The plaintiff in support of his pleadings examined PW1 –

Pritam Singh, PW2 – Jagdish Singh and himself as PW3 and tendered into evidence documents Ex.P1 to P7 i.e. Jamabandies in respect of three villages i.e. Lalru, Ballopur and Jastana Khurd. On the other hand, defendant examined DW1 – Gurdial Singh and tendered into evidence documents Ex.D1 to Ex.D4.

The trial Court, on noticing the afore-mentioned jamabandies i.e. Ex.P1 to P7, without referring the each and every document individually held that the suit land situated at Village Jastana Khurd is Joint Hindu family ancestral coparcenary property and registered transfer deed dated 02.11.2006 was without any legal necessity. As regards land situated in Village Ballopur and Lalru as per revenue record Ex.P1 to P7, was found to be ancestral coparcenary property and decreed the suit by setting aside transfer deed. Defendant nos. 1 and 2 in appeal before the Lower Appellate Court were successful as the judgment and decree of the trial Court was set aside and dismissed the suit.

Mr. Deepak Bhardwaj, learned counsel, appearing on behalf of the appellants, submitted that the Lower Appellate Court without any evidence i.e. the decree sheet or the sale deeds erroneously arrived at a conclusion that the Khasra Nos. 272, 275 and 278 was purchased by Rati Ram from Mohan and transferred in the name of defendant no.2 through Court's decree and also with regard to land at Jastana Khurd was transferred in the name of defendant no.2 through Court's decree dated 14.08.1987. Therefore, these were self acquired property and dismissed suit. During the course of the hearing, learned counsel did not press claim with regard to land situated at Village Lalru as it was, as per the revenue record, shamlat patti. In support of afore-mentioned contention, learned counsel relies upon

a ratio *decidendi* culled out by the Hon'ble Supreme Court in ***Shyam Narayan Prasad Vs. Krishna Prasad and Ors.***, reported in 2018(3) RCR (Civil) 527: AIR 2018 SC 315 to contend that even if the ancestral property on partition qua the others would remain self acquired but for the family members of the recipients i.e. the son, it would remain as an ancestral. Otherwise also, the property which was fallen to the share of father, remained as coparcenary property, since Rati Ram was the grandfather, thus, land situated at Village Jastana Khurd and Ballopur was ancestral, therefore, plaintiffs had share in the aforementioned property.

I have heard learned counsel for the appellants, appraised paper-book and of view that there is no force and merit in the submissions of learned counsel for appellants.

During course of the hearing, learned counsel also shown to this Court the revenue record of afore-mentioned three villages i.e. Ex.P1 to P7. Conceded position on the record is that the land situated in Lalru is shamlat patti and cannot acquire/attain the status of ancestral nature, whereas registered transfer deed dated 02.11.2006 is also from the same very land, but this fact was totally ignored by the trial Court owing to the observation in preceding paragraphs, for the sake of repetition, there was no advertence to the contents of Ex.P1 to P7. Jamabandis commencing from 1981-82 of Village Ballopur and Jastana Khurd only reflect the mutation of inheritance in favour of Gurdial Singh from his father Rati Ram. Thus, land inherited from a grandfather at the hands of the grandson would not be ancestral property in view of para no. 221 of Mullah's Hindu Law (21st Edition). It should be 4th generation. There would have a little force, though

I would be commenting on later part of my judgment regarding the

maintainability of the suit, had plaintiff able to bring on record mutation of inheritance of Rati Ram from Mehar Singh the great grand father. Similar is the situation with regard to village Ballopur.

It is also a matter of record that Gurdial Singh is alive. The relief as noticed above during the life time of the father cannot be granted as if there were no such exchange nor even injunction can be granted. Challenge could have been to the act done by the Karta in respect of joint property. Prayer for joint possession could not have been granted during the life time of father. There is no dispute to the ration decidendi culled out in the judgment cited supra that on the partition of the ancestral property though it may be self acquired to the third party, but definitely carry its character as ancestral to the son and the finding came on a point by relying on the finding by the trial Court declaring the property to be ancestral.

In view of such circumstances, I do not find any illegality and perversity in the finding of fact rendered by the Lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed on the ground of delay as well as on merit.

May 16, 2019
vkd

(Amit Rawal)
Judge

Whether speaking / reasonable : Yes / No

Whether reportable : Yes / No