

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

RSA No.794 of 2018(O&M)
Date of decision: 29.10.2019

Saroj and another

... Appellants

Versus

Smt. Neelam and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Vikrant Hooda, Advocate, for the appellants.

ARUN PALLI, J. (Oral)

Suit filed by the plaintiffs/appellants was decreed by the trial Court vide judgment and decree dated 12.01.2016, but as the appeal preferred against the said decree was accepted and the appellate Court vide impugned judgment dated 13.02.2017 reversed the said decree and dismissed the suit, the plaintiffs/appellants are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for a declaration that sale deed executed by defendant No.2 in favour of defendant No.1 be declared illegal, null and void as it was without any legal necessity or for benefit of the estate. In brief, the case set out by them was that plaintiffs No.1 & 2 were real daughters of defendant No.2-Hawa Singh. Vide sale deed dated 29.05.2012, Hawa Singh sold the suit property in favour of defendant No.1 without any legal necessity, but as the suit property was ancestral, and the plaintiffs had

1/3rd share each therein, their father lacked authority to alienate the same.

Thus, the suit.

In the written statement filed by the defendants, it was pleaded, *inter alia*, that prior to execution of the sale deed dated 29.05.2012, defendant No.2 was owner to the extent of half share in the suit property. It was denied that the suit property was ancestral in nature and the sale deed executed by defendant No.2 was invalid. The fact as regards parties being governed by customs in the matter of alienation was denied. In fact, defendant No.2 had received Rs.8,00,000/- from defendant No.1 as sale consideration. Therefore, the suit was liable to be dismissed.

Upon consideration of the matter, the trial Court, vide judgment and decree dated 12.01.2016, held that suit property was ancestral in nature. Further, evidence on record showed that suit land was alienated without any legal necessity. Although plaintiff Murti Devi (PW2) admitted in her cross-examination that they followed Jat Jamindara customs, but by no stretch of imagination that could establish that her father (Karta) could sell whole of the ancestral property without any legal necessity. Even otherwise, the customary laws were abrogated with effect from 1956 by force of Section 4 of Hindu Succession Act. Accordingly, the suit was decreed and the sale deed dated 29.05.2012 was declared to be illegal, null and void.

However, upon a due and comprehensive consideration of the matter in issue, and the evidence on record, the appellate Court reached a conclusion that: the short issue that required determination was if the suit property in the hands of Hawa Singh (defendant No.2) was ancestral in nature. The case of the plaintiffs was that suit property devolved from Nathu Singh to Hira Singh and Hira Singh to Hawa Singh by way of inheritance.

However, the oldest jamabandi in the point of time i.e. Ex.P2-Ex.P2/T, for the year 1904-05, revealed that the area of land recorded in the name of Mangal Singh, forefather of defendant No.2 and the plaintiffs, was 58 kanals 8 marlas, comprised in khasra Nos.69, 158, 203 & 235. Jamabandi for the year 1924-25 (Ex.P10-Ex.P10/T) showed the name of father of defendant No.2 and grandfather of the plaintiff i.e. Hira Singh son of Nathu, as one of the co-sharers, but the area of land recorded therein was only 9 kanals 12 marlas. Further, the said land was comprised in khasra No.67 min, 248, 249 and 247. Still further, out of those numbers, khasra Nos.67 min and 247 were shown in cultivating possession of Hira Singh as co-sharer. Thus, the said land would not tally with the land reflected in the jamabandi (Ex.P2-Ex.P2/T) either in terms of the area or the khasra numbers it was comprised in. The next jamabandi i.e. Ex.P3-Ex.PW3/T, revealed that total area measuring 30 kanals 8 marlas was jointly owned and possessed by defendant No.2 with other co-sharers. Further, the khasra numbers mentioned even in the said jamabandi would not tally with jamabandies Ex.P2 or Ex.P10. The plaintiffs also failed to show if the suit property depicted in the jamabandi for the year 2004-05 (Ex.P6) was the land that devolved upon defendant No.2 from his forefathers by way of inheritance. For the plaintiffs to succeed, they were required to connect the hereditary devolution of the suit land upto five degrees above them, in the male line of descent. Therefore, apparently, the plaintiffs failed to prove the suit property was ancestral in nature. In reference to the decision of this Court in **Maturam v. Kartar Singh**, RSA No.2697 of 1980, decided on 15.10.2013, it was held that mere admission qua the nature of the suit property being ancestral was

inconsequential and would not absolve a party to establish its nature by leading documentary and other cogent evidence.

As regards customs, the plea that plaintiffs and defendant No.2 (Hawa Singh), who happened to be Jats of erstwhile Rohtak district (now Jhajjar), and were governed by custom in matters of alienation of the ancestral property, and in terms whereof defendant No.2 (Hawa Singh) did not have any right to alienate the suit property. Suffice it to say, once it was the case set out by the plaintiffs themselves that they were governed by Jat Jamindara customs, the only issue that required determination was: what are the rights of the last male holder of the property in family of such Jat Jamindara. Accordingly, in reference to the decision of this Court in **Surajmal and others v. Kamla and others**, 1966 Current Law Journal 453, as also the Hon'ble Supreme Court in **Sube Singh and another v. Kanhiya and Ors.**, 1991(1) LJR 313, it was concluded that last male holder of the Jat agriculturist tribe of Rohtak and Jhajjar districts had an unrestricted right to alienate even his ancestral land except for an immoral purpose. Meaning thereby, sale deed dated 29.05.2012, executed by defendant No.2, could be assailed only on a limited ground that it was executed for an immoral purpose. However, that was not even the case set out by the plaintiffs. That being so, the only and the inevitable conclusion that could be reached: the suit filed by the plaintiffs was liable to be dismissed, for, they failed to substantiate that suit property was ancestral in nature.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusion arrived at by the appellate Court was either contrary to the record or suffered from any

material illegality. No ground is made out to interfere with the findings recorded by the appellate Court.

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

29.10.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO