

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

RSA No. 280 of 2019 (O&M)

Date of decision: 16.9.2019

Jasvir Kumar and another

...Appellants

Versus

Kewal Krishan

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sandeep Banal, Advocate,
for the appellants.

Mr. Naresh Kumar, Advocate, with
Mr. KS Dadwal, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The instant Regular Second Appeal has been filed by the appellants against the judgments and decree dated 5.2.2017 and 18.8.2018 passed by the trial court and the first Appellate Court respectively, decreeing the civil suit filed by the plaintiff/respondent herein.

2. In brief, the facts are that the plaintiff/respondent herein filed a suit for mandatory injunction directing the defendants/appellants herein to hand over the vacant possession of the property described in the plaint. It was averred by the plaintiff/respondent that he was the exclusive owner of the suit property, which was his self-acquired property. Appellants No.1 and 2 are the son and the daughter-in-law of the plaintiff and he had given some portion of the house in dispute to them as licensee. Since the

appellants started quarreling with the plaintiff/respondent and his widowed daughter, therefore, he disinherited them from his property by way of publication of a notice in the newspaper. The appellants also tried to occupy a shop, wherein the widowed daughter of the plaintiff/respondent was running a boutique and ultimately the matter was compromised before the police. Since the appellants did not mend their ways and refused to vacate the premises in dispute, the civil suit came to be filed by the plaintiff/respondent.

3. On notice, the appellants contested the suit, inter-alia, taking the objections that the suit was not maintainable and that the plaintiff/respondent had not come to the Court with clean hands. It was denied that the property was given to them as licensee or they ever quarreled with the plaintiff/respondent or his daughter.

4. On completion of the pleadings, issues were framed, the parties led evidence in order to establish their respective claims. On scrutiny of the evidence brought on record, the trial court decreed the suit. The appellants unsuccessfully challenged the judgment and decree in appeal. Hence the instant appeal.

5. Learned counsel for the appellants, inter-alia, contends that the plaintiff/respondent failed to establish the fact that the property in dispute was self-acquired property of the plaintiff/respondent. It is further contended that the appellants are in possession of the property being co-parceners. It is also contended that since the plaintiff/respondent claimed that the appellants were licensee in the suit property, a suit for mandatory injunction was not maintainable and in fact suit for possession should have

been filed.

6. Per contra, learned counsel appearing on behalf of the plaintiff/respondent submits that it stand established on the record by leading cogent and convincing evidence that the plaintiff/respondent was owner in possession of the suit property and the appellants were in possession of some portion of the same in the capacity of licensees only and therefore, both the courts below have rightly decreed the suit so filed by the plaintiff/respondent.

7. I have heard learned counsel for the appellants and have also perused the impugned judgments.

8. At the outset, it is to be noticed that since the dispute was between the father and the son, this Court deemed it appropriate to refer the matter to a Mediator. Consequently, the parties were directed to appear before the Mediation & Conciliation Centre of this Court, but the parties failed to resolve the dispute amicably.

9. The sole question that falls for determination in the instant appeal is, whether the suit property was ancestral and Joint Hindu Family property?

10. The trial court discussed the above issue in great detail and after taking into consideration a number of authorities on the subject matter, held that the suit property was not ancestral in nature. It was also held that the appellants were licensees and once, the present suit was filed by the plaintiff/respondent, it amounted to notice of termination of license and the appellants were under an obligation to hand over the possession to the plaintiff and since they failed to do so, the present suit for mandatory

injunction was very well maintainable. While decreeing, the suit, the trial court held as under:-

“27. In the present case as well, the suit property inherited by plaintiff from his father was inherited as his separate property under Section 8 of Hindu Succession Act. The heirs of plaintiff did not get a right automatically in that property as it ceased to be Joint Hindu Family property and became separate property of the plaintiff.

*28. Now, in the instant case, the onus was on the defendants to prove that the suit property was ancestral and Joint Hindu Family property and plaintiff was not the absolute owner of the same. But, on the basis of the entire discussion above it can be concluded that the defendants have failed to prove that the suit property in hands of plaintiff was Joint Hindu Family property. In fact, in light of **Chander Sen's** judgment as discussed above, the property in the hands of plaintiff was his separate property. Hence, it cannot be held that the suit property was Joint Hindu Family property in which the defendants were coparceners.*

29. The only way the defendants could have established that the suit property was ancestral property would have been if they could show that the property was inherited by plaintiff before the commencement of Hindu Succession Act, 1956 or if the property was purchased out of the nucleus of joint family property. However, the defendants have failed to prove either of the two things.

30. This position of law along with facts as to how the properties are HUF properties was required to be stated as a positive statement in the plaint of the present case, but it is seen that except uttering a mantra of properties inherited by plaintiff being 'ancestral' properties and thus the existence of HUF, there is no statement or a single averment in the pleadings as to when was this HUF which is stated to own the

HUF properties came into existence or was created i.e. whether it existed even before 1956 or it was created for the first time after 1956 by throwing the property/properties into a common nucleus.

31. In the absence of any such evidence, it cannot be held that that the suit property was ancestral in nature. The copy of the jamabandi for the year 2012-2013 clearly shows that plaintiff was a co-owner in possession of the suit property and the defendants are no-where reflected to be in ownership or possession of the property. “

11. The above findings of fact were affirmed by the first Appellate Court, on appeal being filed by the appellants. In view of the above factual legal position, it can be safely concluded that the appellants were not able to prove that the suit property was ancestral and Joint Hindu Family property. No grounds are made to interfere with impugned judgments in the instant appeal. Both the courts below have appreciated the documentary as well as oral evidence on record and the pleadings of the parties in right perspective and no fault could be found in the same. Learned counsel for the appellant has not been able to point out any perversity or irregularity in the impugned judgments. The judgments of both the courts below are well considered. No question of law, much less substantial question of law arises for consideration in the present appeal.

12. The Regular Second Appeal stand dismissed accordingly.

16.9.2019

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No