

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 514 of 2000 (O&M)

Date of Decision: 21. 05.2020

Ajit Singh and Another

... Appellant(s)

Versus

Ujjal Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. G.S.Punia, Senior Advocate
with Ms. Harveen Kaur, Advocate
for the appellant.

Mr. Karan Bhardwaj, Advocate
for the respondent.

Anil Kshetarpal, J.

Defendants No.1 and 2 have filed the present regular second appeal against the judgement & decree passed by the learned Additional District Judge while reversing the judgement & decree passed by the learned Civil Judge (Junior Division), Rupnagar.

In the considered view of this Court, the following questions of law arise for determination:

- “1. Whether a member of the family, who is not party to a civil Court judgement & decree passed under the provisions of Order XII Rule 6 CPC while asserting factually incorrect facts is bound by the same?
2. Whether in absence of evidence to link/connect the sale consideration received while disposing of the alleged

ancestral property, subsequent purchase made by the common ancestor can be held to be Joint Hindu Family Co-parcenary property?

Some facts are required to be noticed. As per pleadings of the parties and the documents available on the file, it is apparent that Warryam Singh was common ancestor of the parties. Sunder Singh was his son. Sunder Singh has one son-Pritam Singh and four daughters. He bequeathed his property by registered Will dated 14.11.1961 in favour of Pritam Singh. Sunder Singh died on 15.04.1977. The property left behind by Sunder Singh was inherited by Pritam Singh on the basis of registered testamentary disposition dated 14.11.1961. The land left behind by Sunder Singh was entered in the revenue record in the name of Pritam Singh vide mutation dated 21.02.1977 Ex.P10 on the file.

It is the case of the plaintiff itself that Pritam Singh has two sons, namely Ujjal Singh and Ajit Singh and two daughters. Ujjal Singh is the plaintiff/respondent. It is the pleaded case of the plaintiff that Pritam Singh sold his ancestral Joint Hindu Family property through various sale deeds including sale deeds dated 05.06.1980 and 11.01.1984 (two in numbers). The plaintiff asserts that the suit property was purchased by Pritam Singh through the funds of Joint Hindu Family and the earnings of Joint Hindu Family Co-parcenary Property sold.

Pritam Singh has suffered a consent decree passed under Order XII Rule 6 CPC with respect to properties mentioned under Clauses (a), (b) & (c) of the caption of the plaint in favour of Ajit Singh vide judgement & decree dated 17.11.1994. Plaintiff-Ujjal Singh has sought declaration that the

plaintiff and the defendants are co-owners in possession of the suit property situated in village Bhairo Majra, Tehsil and District Ropar (now in S.A.S. Nagar, Mohali) being a Joint Hindu Family Co-parcenary Property and the judgement & decree dated 17.11.1994 is illegal and void.

There are two defendants in the suit, namely Ajit Singh and Pritam Singh. Both of them have filed a joint written statement while asserting that the property was self-acquired property of Pritam Singh and therefore, in a family settlement, Pritam Singh has acknowledged Ajit Singh as an exclusive owner of the property on the basis thereof.

The following issues were framed:

- “1. Whether property in dispute is co-parcenary between the parties? OPP*
- 2. If issue No.1 is proved, whether decree dated 17.11.1994 is illegal and not binding upon the plaintiff? OPP*
- 3. Relief”.*

On appreciation of evidence, the learned trial Court dismissed the suit, whereas the learned first Appellate Court has reversed the judgement & decree passed by the learned trial Court.

At this stage, it will be appropriate to note that the parties produced the following evidence:

“Evidence led by the plaintiff:

- (i) PW1-Rattan Singh son of Ganga Singh.*
- (ii) PW2-Randhir Singh.*
- (iii) PW3-Ujjal Singh, plaintiff.*

Documents produced by plaintiff:

- (i) *Jamabandi for the year 1989-90 village Bharo Majra Ex.P1.*
- (ii) *Jamabandi for the year 1989=90 village Bhairo Majra Ex.P2.*
- (iii) *Statement of Pritam Singh in Civil Suit No. 466 of 09.11.1994 Ex.P3.*
- (iv) *Order dated 17.11.1994 in Civil Suit No. 466 of 09.11.1994 Ex.P4.*
- (v) *Plaint in Suit No. 466 of 09.11.1994 Ex.P6.*
- (vi) *Mutation No. 419 of sale by Pritam Singh Ex.P7.*
- (vii) *Mutation No. 498 of sale dated 21.02.1984 by Pritam Singh Ex.P8.*
- (ix) *Mutation No. 599 of sale by one Mulakh Raj in favour of Surmukh dated 11.08.1986 Ex.P9.*
- (x) *Mutation No. 277 dated 28.02.1977 after death of Sunder Singh 14.11.1961 depicting pedigree table that Sunder Singh had four daughters and son Pritam Singh Ex.P10.*
- (xi) *Mutation No. 528 dated 28.03.1985 of purchase of land by Surmukh Singh in favour of Pritam Singh Ex.P11.*
- (xii) *Mutation No. 265 of exchange by Sunder with Dewan Singh dated 09.06.1975 Ex.P12.*
- (xiii) *Mutation No. 539 of sale dated 11.04.1985 of sale of some land other than land inherited from Sunder Singh Ex.P13.*

Evidence led by Defendants:

- (i) DW.1 Ajit Singh, Defendant No.1.
- (ii) DW.2 Pritam Singh, defendant No.2.

Documents produced by defendants:

- (i) Jamabandi for the year 1994-95 Ex.D1.
- (ii) Jamabandi for the year 1994-95 Ex.D2.
- (iii) Mutation No. 816 of decree dated 17.11.1994 in Civil Suit No. 466 of 09.11.1994 Ex.D3.
- (iv) Copy of Khasra Girdawari Ex.D4.
- (v) Khasra Girdawari 1994 to 1997 Ex.D5.
- (vi) Order in Civil Suit No. 466 of 09.11.1994 dated 17.11.1994 Ex.D6.
- (vii) Decree in Civil Suit No. 466 of 09.11.1994 dated 17.11.1994 Ex.D7.
- (viii) Written statement in Civil Suit No. 466 of 09.11.1994 dated 17.11.1994 Ex.D8”.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the judgements passed by both the Courts below and the requisitioned record of the learned trial Court.

Learned counsel for the appellant has filed synopsis. The main argument of learned counsel for the appellant is that Sunder Singh died in the year 1977 after the Hindu Succession Act, 1956 came into force and therefore, the property inherited by Pritam Singh is personal property. He further submitted that the property has been received by Pritam Singh by way of registered Will. He, hence, submitted that the property is not Joint

Hindu Family Co-parcenary Property.

On the other hand, learned counsel appearing for the plaintiff/respondent has submitted that the judgement & decree dated 17.11.1994 was obtained by defendant No.1-Ajit Singh by making factually an incorrect statement. It is asserted that in Ex.P6, the plaint of Civil Suit No. 466 dated 09.11.1994 filed by Ajit Singh, it has been pleaded that Ajit Singh is the only son of Pritam Singh, which is a factually incorrect statement. He, hence, submitted that the suit filed by the defendant does not bind the rights of the plaintiff herein. He further submitted that the defendant when appeared in evidence has admitted that the property is ancestral in nature and therefore, the learned first Appellate Court has correctly decreed the suit filed by the plaintiff.

On analysis of the arguments of learned counsel for the parties, the questions which have been framed, arise for consideration.

Now the stage is set for discussing the questions of law which have been framed earlier.

- 1. Whether a member of the family, who is not party to a civil Court judgement & decree passed under the provisions of Order XII Rule 6 CPC while asserting factually incorrect facts is bound by the same?**

It will be noted here that in the previous plaint, which was filed by defendant No.1-Ajit Singh (appellant herein) on 09.11.1994 (Ex.P6), factually incorrect statement of fact was made to the effect that he is the only son of Pritam Singh. Pritam Singh appeared in the suit and admitted written statement resulting in judgement & decree dated 17.11.1994. It is not in dispute now in the present litigation that the plaintiff-Ujjal Singh is also son

of Pritam Singh. Therefore, the entire basis of the suit filed by Ajit Singh

(plaintiff in Civil Suit No. 466 dated 09.11.1994) was factually incorrect. The entire foundation laid in the previous suit which resulted in judgement & decree dated 17.11.1994 was against the record. Hence, such judgement & decree, which has been passed by the Court solely on the basis of concession of Pritam Singh-defendant No.2, is incorrect. Still further, the judgement & decree dated 17.11.1994 is based upon the alleged family settlement in the year 1992. However, when Pritam Singh appeared in evidence as DW2, he admitted that no family partition took place between him and his son Ajit Singh and other family members. What has been stated is that since Ajit Singh is his son, therefore, he had given the whole property to him. In the subsequent part, it has been found that the property is self-acquired. As such, neither any family settlement is proved nor Ajit Singh was found having any pre-existing right. Even if it is assumed that the self-acquired property could be distributed between the family members by way of family settlement, however, once defendant-Pritam Singh admitted that there was no family settlement, therefore, the judgement & decree dated 17.11.1994, passed on the basis of family settlement, is against the record and cannot be held to be binding on the rights of the plaintiff.

Keeping in view the aforesaid facts, the finding of the learned first Appellate Court with regard to effect of the judgement & decree dated 17.11.1994 on the rights of the plaintiff is upheld. It is declared that a member of the family who is not party to a previous Civil Court's judgement & decree passed by the Court under Order XII Rule 6 CPC on the basis of factually incorrect foundational facts, is not binding upon such member of the family.

Hence, question No.1 is answered against the appellants.

2. Whether in absence of evidence to link/connect the sale consideration received while disposing of the alleged ancestral property, subsequent purchase made by the common ancestor can be held to be Joint Hindu Family Co-parcenary property?

It is the case of the plaintiff that the property in dispute is Joint Hindu Family Co-parcenary Property as it was purchased with sale consideration derived from sale of ancestral Joint Hindu Family Property. However, the plaintiff has not led sufficient evidence to prove the same. Copies of various sale deeds executed by Pritam Singh have not been produced. Only mutation of such sale deeds have been produced as Ex.P7, Ex.P8 and Ex.P13. It is not proved as to how much amount was received by Pritam Singh on the sale of property inherited from Sunder Singh. Even the sale deed through which Pritam Singh purchased the suit property has not been produced. It is not known as in how much amount the suit property was purchased. In such circumstances, the learned first Appellate Court has erred in failing to connect the amount of sale consideration received by Pritam Singh on sale of property inherited from Sunder Singh and the property purchased by him with the consideration paid while purchasing the property in question. The plaintiff has failed to show that Pritam Singh has purchased the suit property by the aforesaid sale consideration itself. Thus, the learned first Appellate Court has erred while recording a finding that the property which was undisputedly purchased by Pritam Singh himself is a Joint Hindu Family Co-parcenary Property. Before such finding could be recorded, it was incumbent on the plaintiff to prove by leading sufficient evidence that Pritam Singh has used the same amount which was received by him on sale of the property received from his father Sunder Singh by way

of registered Will. Still further, it is not in dispute that Pritam Singh received the property by way of a registered Will to the exclusion of four daughters of Sunder Singh. Thus, Pritam Singh never received the property by survivorship. Accordingly, question No.2 is answered against the plaintiff and in favour of defendants No.1 & 2.

It has come on record that plaintiff-Ujjal Singh had shifted from village Bhairo Majra to Kharar, which is a sub-urban area and started his own business. He is continuously living in Kharar for 15/20 years before filing of the suit. It is being claimed by Pritam Singh that he and Ajit Singh had been taking the land on lease and earned sufficient money to purchase the suit property. It has also come on record that some property has been purchased in Andaman & Nicobar Islands. It has also come on record that Pritam Singh is residing in Andaman & Nicobar Islands. In such circumstances, it would not be appropriate to hold that the parties continued to be members of the Joint Hindu Family or there was any co-parcenary existing on the date the judgement & decree dated 17.11.1994 was passed.

Keeping in view the aforesaid facts, the judgement of the learned first Appellate Court is upheld on account of finding on question No.1. It will be noted here that Pritam Singh, who has died during the pendency of the suit, is stated to have executed a registered Will in favour of Ajit Singh on 29.09.2003. This Court is not recording any finding on the correctness or validity of the aforesaid Will because that is not the question involved in the present appeal.

With these observations, the appeal filed by the defendants/appellants is disposed of with the following observations.

It will be further clarified here that defendant No.1-Ajit Singh claims that the property detailed under Clause (d) of the caption of the plaint is his self-acquired property measuring 2 kanals 16 marlas. Learned counsel for the respondent failed to dispute that fact.

In view of the aforesaid, the judgement passed by the learned first appellate Court is upheld with regard to the properties described in Clauses (a), (b) & (c) of the caption of the plaint. With the aforesaid modification, the appeal is disposed of.

The miscellaneous application(s), if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

May 21, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No