

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 2554 of 2014 (O&M)
Date of Decision:28.1.2020**

Jagir Singh (deceased) through Lrs. and others

---Appellants

versus

Harpreet Singh

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. B.R.Mahajan, Senior Advocate with
Ms. Surbhi Kaushik, Advocate
for the appellants
Mr. Sunil Chadha, Senior Advocate with
Ms. Upasana Rana, Advocate
for the respondent**

Rekha Mittal, J.

CM No. 13873-C of 2019

Prayer in this application is for impleading legal representatives of Jagir Singh-appellant No. 1(since deceased).

In view of averments made in the application supported by an affidavit of Paramjit Singh, one of the Lrs and arguments advanced by counsel for the applicants, the application is allowed and persons mentioned in para No. 2 of the application are allowed to be brought on record as legal representatives of Jagir Singh-appellant No. 1 (since deceased), for the purpose of present lis only, subject to just exceptions.

Disposed of accordingly.

CM No. 11040-C of 2015

Prayer in this application filed under order 41 Rule 27 of the

Code of Civil Procedure is for placing on record Annexures A-1 and A-2.

Heard.

Allowed as prayed for. Annexures A-1 and A-2 are taken on record, subject to just exceptions.

Main case

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit filed by respondent/plaintiff Harpreet Singh minor through his mother and natural guardian Smt. Sukhraj Kaur claiming 1/24th share i.e. land measuring 13 kanal 13 marlas out of land measuring 327 kanal 17 marlas, was decreed by the trial court vide decree and judgment dated 4.10.2011 that came to be affirmed in appeal by the Additional District Judge, (Ad hoc) Fast Track Court, Amritsar vide decree and judgment dated 3.2.2014.

Indisputably, the respondent-plaintiff is son of Paramjit Singh who is grand son of Darshan Singh. Bachan Singh, head of the family died in the year 1948 and he had two sons namely Surta Singh and Darshan Singh. Darshan Singh died on 4.8.1998. Before his death, he executed four sale deeds in the year 1997 whereby he sold land more than 170 kanals. The respondent-plaintiff claimed his share in the suit property on the premise that he is one of the coparceners, therefore, entitle to a share in the ancestral coparcenary property in the hands of Sh. Darshan Singh.

Counsel for the appellants has raised two legal submissions namely:-

- (i) Harpreet Singh-respondent was born on 28.1.2000 out of wedlock of Paramjit Singh and Sukhraj Kaur who performed marriage on 13.2.1998, therefore, Harpreet Singh was not in

existence when Sh. Darshan Singh sold the said ancestral coparcenary property in the year 1997.

(ii) Harpreet Singh can not assert his claim to be entitle to 1/24th share in the alleged ancestral coparcenary property during life time of his grand father and father.

Counsel for respondent-plaintiff, on the contrary, has made mercy submission that on account of marital discord between Paramjit Singh and Sukhraj Kaur, respondent has been deprived of love and affection of his parental family and so also the property which was owned by his father or grand father. At the same time, he has supported concurrent findings recorded by the courts.

Be that as it may, it is undisputed position of the case that Sh. Darshan Singh sold land of his share (may be more than his share) vide four sale deeds executed way back in the year 1997. Darshan Singh died on 4.8.1998; marriage of Sukhraj Kaur and Paramjit Singh was performed on 13.2.1998 even after transfer of land by Darshan Singh and Harpreet Singh-respondent/plaintiff was born on 28.1.2000. Since Harpreet Singh was not even born or in womb of his mother at the time of sale of property by Sh. Darshan Singh, by no stretch of imagination, he can claim himself to be a coparcener or entitle to have a share in disputed land. In this view of the matter, challenge to sale deeds executed by Darshan Singh at the behest of respondent-plaintiff is not sustainable and as such the respondent can not claim himself to be entitle to 1/24th share in the aforesaid land. Both the courts have committed a gross error rather perversity by failing to consider the aforesaid factual and legal aspect, in right perspective. That being so, judgments and decrees passed by the Courts can not be allowed to sustain

on this score alone and accordingly set aside. In this view of the matter, this Court need not to dilate on the second issue if Harpreet Singh can claim a specific share in the property during life time of his father and grand father.

For the foregoing reasons, the appeal is allowed. Suit filed by the respondent-plaintiff is dismissed, leaving the parties to bear their own costs. However, nothing stated hereinbefore shall cause prejudice to right of the respondent-plaintiff in case he has any claim in any property owned by his father.

(Rekha Mittal)
Judge

28.1.2020

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No