

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

RSA 775 of 2018 (O&M)

Date of Decision : December 16, 2020

Karamjit Kaur

...Petitioner

VERSUS

Mehar Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Vaneet Soni, advocate for the appellant.

Mr. Parvinder Singh, Advocate for respondent No.1.

Mr. Sanjiv Gupta, advocate for LR's of respondent
No.2.

Mr. Sapan Dhir, advocate

for respondent No. 3.

Service of respondents No. 4 and 5

Dispensed with being exparte by the lower Court.

FATEH DEEP SINGH, J.

Upon death of one Kashmir Singh his son Bija Singh
inherited his estate which comprises of the suit property detailed
in the plaint which need not be reflected here. Undisputedly, Bija
Singh upon his death in the year 1981 left behind four sons

(defendants No. 1 to 4) and a daughter (present plaintiff/appellant). The present dispute between the siblings revolves around the estate of Bija Singh. Prior to his death, it is claimed by the defendants that Bija Singh executed a valid registered Will dated 12.09.1977 (Ex.DW1/B) leading to sanction of mutation dated 07.01.99 by AC (I) Mohali (Ex.D1). Moreover in a Civil Suit No. 27 judgment and decree dated 17.04.79 has been passed by the Civil Court on the basis of alleged Family Settlement made in June 1978. Furthermore, it is claimed by the sons that consequence upon a suit filed by the sons Harpal Singh and Surjit Singh both defendants against their father Bija Singh a consent decree dated 17.04.1979 was passed by the Civil Court (Ex.P4). Aggrieved over this denial of a legitimate right to the estate of her father, the plaintiff has knocked at the doors of the Civil Court seeking a suit for declaration that the judgment and decree dated 17.04.79 alleged to have been suffered by Bija Singh in favour of the sons was a collusive and does not affect the rights of the daughter and has further lay

challenge to the registered Will dated 12.09.1977 claiming to be an outcome of fraud and coercion which does not binds the plaintiff and, therefore, claimed that she was entitled to 1/5th share of the entire estate left by Bija Singh, her father. The Court of learned Civil Judge (Junior Division) SAS Nagar Mohali vide judgment dated 26.05.2014 partly decreed the suit of the plaintiff pronouncing that the plaintiff was entitled to joint possession and declaration of 1/25th share in the suit property and an order of restraint by way of permanent injunction restraining the defendants from denying the share of the plaintiff in the suit property holding out that judgment and decree dated 17.04.79 as well as registered Will dated 12.09.77 are ineffective and inoperative and had no impact on the rights of the plaintiff.

Aggrieved over these findings, three different appeals have come about under Order 41 Rule 1 read with Section 96 CPC against this judgment and decree of the learned Civil Judge (Junior Division). Civil Appeal No. RT47/02.7.14/09.07.2017 is by the plaintiff Karamjit Kaur challenging the findings whereby her

suit has only been partly decreed and another Civil Appeal No. RT/36/02.07.14/09.02.2017 by her brother Mehar Singh and third Civil Appeal No. RT37/02.07.2014/.09.02.2017 by other brothers Harpal Singh who accidentally has since died and his LRs comprising his widow and two sons and a daughter have also challenged these findings of the learned trial Court. The Court of learned Additional District Judge SAS Nagar Mohali through impugned findings dated 11.09.2017 by a common judgment disposed of these three respective appeals whereby holding that Karammit Kaur was not entitled to any share in the estate of her father and thereby while allowing the appeals of the brothers and the heirs has dismissed that of the original plaintiff/appellant Karamjit Kaur. It is in the background of this ding dong battle between the siblings, the aggrieved daughter has come in this Regular Second Appeal.

Heard Mr. Vaneet Soni, Advocate for the appellant,
Mr. Parvinder Singh, Advocate for respondent No.1, Mr. Sanjiv

Gupta, Advocate for LR's of respondent No.2 and Mr. Sapan Dhir, advocate for respondent No. 3 and perused the records.

In the light of admitted legal proposition as has been laid down in '**Kirodi (since deceased) through his LR Vs. Ram Parkash & others' Civil appeal No. 4988 of 2019; SLP(C) No. 11527 of 2019 decided on 10.05.2019**, the Court is not supposed to frame substantial questions of law in view of the provisions enshrined under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana.

From the arguments addressed at length by the respective counsel for the parties and what has reflected from the records of the case, it is by no means put to question as to the fact that Bija Singh had inherited the suit property from his deceased father Kashmir Singh and further that Bija Singh upon his death at the age above 85 years left behind his four sons, namely, Mehar Singh, Harpal Singh, Dhanwant Singh and Surjit Singh (mentioned as Surjan Singh in memo of parties of RSA

filed before this Court) and one daughter Karamjit Kaur who all at that time were major. The claim and counter claim of the parties is over the registered Will dated 12.09.77, judgment and decree dated 17.04.79 and consequently entitlement of respective shares of the litigants to this *lis*. The factum of these claims and counter claims have come about by the testimony of the plaintiff herself as PW1 and by examining PW2 Dhanwant Singh and PW3 Surjeet Singh while on the other hand defendants examined DW1 Sardool Singh, defendant Mehar Singh himself as DW2, DW3 Sukhdarshan Singh, DW4 S.K. Attri Advocate and DW5 Jitender Kumar, record keeper.

On behalf of the plaintiff/appellant, Mr. Soni has sought to impress upon the Court that with the amendment of Section 6 of the Hindu Succession Act, 1956, the same is to be given effect from 17.06.56 when the Act has come about and, therefore, these amended provisions are to be given retrospective effect. Since the daughter was being denied her right in the coparcenary property and, therefore, inequality that

has come about needs to be removed. It is claimed that the claim of oral partition leading to passing of the judgment and decree which is collusive and not by consent was purely with the ride to deny the right of the daughter a patriarchal approach to the devolution of estate and has cited **Vineeta Sharma Vs. Rakesh Sharma and others** passed in **Civil Appeal/Diary No.**

32601 of 2018 [2020(3) RCR (Civil) 473]

On the other hand Shri Parminder Singh learned counsel for respondent No. 1 and Shri Sanjiv Gupta, learned counsel for respondent No. 2 had made valiant efforts to bring about first that the daughter (then plaintiff) had slept over the matter fully aware of what was going on within the family and did not intentionally lay her claim or challenge the orders on the basis of which the estate has devolved upon the sons and after inordinate delay having woken up from her slumber is not entitled to any relief after this inordinate delay and have relied upon **Vineeta Sharma Vs. Rakesh Sharma and others** 2020(3) R.C.R. (Civil) 473, **V. Kalyanaswamy (D) by Lrs and another**

Vs. L. Bakthavatsalam (D) by Lrs and Ors 2020(3) R.C.R. (Civil) 404, Phool Patti and another Vs. Ram Singh (dead) through Lrs. And another 2015(1) L.A.R. 294, Ved Mitra Verma Vs. Dharam Deo Verma 2014(9) Scale 219, Hari Singh Vs. Gurcharan Singh and others 2003(3) R.C.R. (Civil) 632, Bhajan Singh Vs. Jasvir Kaur 2016(2) PLR 489, Premier Tyres Limited Vs. Kerala State Road Transport Corporation 1993 AIR (SC) 1202 and Bant Singh and another Vs. Didar Singh and others 2018(1) PLR 327 to bring about the fact when a right is given to the sons by any disposition or a decree including a settlement between the family, the daughter cannot assert her right thereby invalidating the effect of these orders/bequeath and has sought to agitate that suit of the daughter is barred by *res judicata* and there was no law for this Court to show indulgence and there has been no ingredients essentially pleaded in the pleadings of the plaintiff whereby she can seek support of Vaneeta Sharma's case (supra) and, therefore, terming the decree between the father and sons to be

a purely consent decree has sought dismissal of the appeal.

Shri Sapan Dhir, learned counsel for respondent No. 3 to bring about the fact that since the Will by the father was a registered document and, therefore, executing a Will there was no unnatural or unusual act by the father in denying a married daughter any right to his estate and being the registered document was in itself a notice to the public at large and the Will having been given effect and acted upon leading to passing of order of mutation leaves no scope to the plaintiff to come about and re-agitate when she had the knowledge much prior thereto which she has accepted in her cross-examination and has sought to place reliance on **Mahesh Kumar (dead) by L.Rs Vs. Vinod Kumar and others** 2012(2) R.A.J. 40, **Suraj Lamp and Industries (P) Ltd. Through DIR Vs. State of Haryana and another** 2010(3) BCR 808, **Anil Rishi Vs. Gurbaksh Singh** 2006(5) ALL MR(SC) 95 and **Balathandayutham and another Vs. Ezhilarasan** 2010(1) HLR 561. Concluding the submissions they sought dismissal of the appeal.

Going through the submissions of both the sides.

There has been divergent expression of opinion by different Courts throughout this country concerning the interpretation of Section 6 of Hindu Succession Act which was subsequently amended by the Act of 2005. To lay at rest such controversies over differed opinions of the Courts, the Apex Court faced with these divergent opinion amongst the Court pronouncements had referred to a larger Bench this controversy and in **Vaneeta Sharma's** case *ibid* considering the impact of this amendment, the Supreme Court had held as below:-

129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as

provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of

a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognized mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

Thus, in the light of the admitted stand of the plaintiff-daughter that she at the time of death of Bija Singh in the year 1981 was major and, therefore, in view of **Vaneeta**

Sharma's ratio is deemed to be a coparcener in this joint property since the time of her birth. It is by a subsequent act that Bija Singh through his alleged Will dated 12.09.2077 has tried to oust the right of the daughter to his property apprehensive of his death and to make double sure a civil suit No. 27 was got filed by the sons and against the father without arraigning the daughter as a party. Father in his written statement in that suit and so is the statement in the Court leading to passing of judgment and decree dated 17.04.79 shows and highlights the element of collusiveness and which in view of this arrangement intended to rob the daughter of her coparcener share in the joint undivided property had managed to secure a collusive decree which by no stretch of imagination can be termed to be a consent decree.

It has been held in **Vaneeta Sharma's** case *ibid* to the effect that it cannot be inferred that the daughter is conferred with the right only on the death of a living coparcener. By declaration contained in section 6, she has been made a coparcener. The precise declaration made in section 6 (1) has to

be taken to its logical end; otherwise, it would amount to a denial of the very right to a daughter expressly conferred by the legislature. Survivorship as a mode of succession of property of a *Mitakshara* coparcener, has been abrogated with effect from 9.9.2005 by section 6(3).

Thus, by that analogy, it has been held that if a daughter is alive on the date of enforcement of the Amendment Act, she becomes a coparcener w.e.f. the date of Amendment Act irrespective of the date of birth earlier in point of time. It was further taken note of that partition should be evinced by registered public document and in case of partition being oral it should be supported by documentary evidence and the intention of the amendment was to avoid any sham or bogus transaction in order to defeat the rights of coparcenary conferred upon females in the family by the amendment. The act of Bija Singh in collusion with his sons who happened to be beneficiaries of the Will and so as a consequence of collusive judgment and decree arising out of it is nothing but a step in that direction reflective of

patriarchy and which has led to mutation order dated 07.01.1999. It is well settled law that mutation does not confer title and is purely for the purposes of payment of land revenue and, therefore, this does not augurs well for the defendants. The final conclusion drawn by this ratio is to the effect that daughters cannot be deprived of their right to equality conferred upon them by Section 6 of the Hindu Succession Act and which needs to be upheld. The sons have set up their claim on the basis of a registered Will dated 12.09.77. Pursing document Jamabandi for the year 1970-71 (Ex.P1) reflects that Bija Singh son of Kashmira Singh was the owner of this suit property and it was only subsequently as per jamabandi for the year 2005-06 Ex.P-2 (four sheets) his sons have come about to be the owners.

The pleadings in the suit between sons Harpal Singh, Surjit Singh on one hand and Bija Singh, Mehar Singh and Dhanwant Singh on the other hand which is by way of declaration to the effect that plaintiff and defendants are the owners in possession of the land (which is subject matter of this

dispute) shows that their claim is on the basis of family settlement which is not corroborated or supported by any independent documentary means nor the alleged oral partition had seen the light of the law on the records. Even there is no specific date of the same with finer particulars wherein there is no mention of a daughter evident from the pleadings of the plaintiffs in that suit by way of Ex.P3 shows that the daughter has not been mentioned therein nor made a party and the cause of this settlement is that property was unmanageable as Bija Singh had grown old and wherein it is duly conceded that it was joint Hindu property of the family. The judgment Ex.P4 is tersely worded and does not in any manner goes to show passing of any preliminary decree by way of partition determining the respective shares of the parties followed by a final decree is another distressing feature for the beneficiaries of this judgment and decree dated 17.04.79. The own document which is not displaced by the parties by way of mutation order dated 16.6.1998 finds mention that daughter Karamjit Kaur had

objected to this arrangement before the revenue authorities and, therefore, her cause to lay her claim and challenge to this arrangement. Whatever be so either by way of Will or family settlement which has led to this mutation clearly answers the arguments raised by the counsel for the respondents-beneficiaries and substantiates that she right from the date of knowledge of the arrangement had put-forth her claim initially before the Assistant Collector Grade-I and that Assistant Collector Grade I had disposed of the mutation at her back and which cause of action had been subsisting and continuing throughout by virtue of subsequent entries that has come about from time to time in the revenue records and rather the order dated 07.01.1999 placed on the records purported to have been passed by Assistant Collector-I SAS Nagar Mohali shows that it was at the back of Karamjit Kaur plaintiff the mutation on the basis of alleged Will has come about and, therefore, is another distressing feature which raises suspicion of the Court that all was not well with these arrangements so put-forth by the male

progeny. More so, the document of disagreement and disputed registered Will Ex. DW1/A no where mentions that Bija Singh had a daughter nor why she is being denied her right to inheritance. What one can perceive from the writing in this Will is that it has been intentionally withheld as to the birth of the daughter Karamjit Kaur which is reflected on the back page of Ex.D2. The property being earlier owned by Kashmir Singh father of Bija Singh and upon whose death on 06.09.1910 Bija Singh had inherited his estate through succession. The learned trial Court while adjudicating on Issue No. 1 had rightly held that Will dated 12.09.77 purportedly to have been executed by Bija Singh is not proved to be a genuine Will and consequently finding of issue No.3-A went against the beneficiaries. The learned first Appellate Court purely on the surmise that the daughter failed to lay challenge to denial of right to estate of the deceased had come up after 03 years beyond limitation and, thus, consequently set-aside these findings of the trial Court and which to the mind of this Court is highly illegal and uncalled for.

As per the Schedule to the Limitation Act 1963 articles 65 and 109 lay down that the possession of immovable property or any interest therein based on title or by a Hindu to set aside father's alienation of ancestral property, the limitation is twelve years, so rightly held by the learned trial Court and which findings of trial Court needs to be upheld and that of the first Appellate Court needs to be struck down. The lone attesting witness of the Will namely Rann Singh had died and his signatures were sought to be proved through Bir Singh and Sardool Singh who absolutely denied having any knowledge where Rann Singh had signed and rather claimed that he had signed all land revenue receipts, thus, there is no semblance of any secondary evidence to prove his signatures thereby upsetting the apple cart on which the beneficiaries have tried to take a ride through this Will which stands unproved and, therefore, the findings of the trial Court on the Will by way of issue No. 3-A and 4 needs to be upheld and that of first Appellate Court needs to be set-aside. The learned trial Court while giving its findings on Issue No. 3 regarding the

judgment and decree dated 17.04.79 had held that in view of findings of Issue No. 1, this judgment and decree is of no consequence and which is totally in consonance with the evidence on the record how and by what means the learned first Appellate Court only on the grounds that the suit was barred by limitation having been filed beyond 03 years has reversed these findings which needs to be set-aside being totally contrary to the evidence and the records.

The material issue as to the suit being barred by limitation, the trial Court has held that limitation for a suit for possession on the basis of title is 12 years and, therefore, has held that suit of the plaintiff was within limitation but the learned first Appellate Court merely on the grounds that it was a suit for declaration, the limitation was 03 years had dismissed the suit and so reversed the findings of the trial Court. As has already been held by this Court in the forgoing paras the cause of action for the plaintiff was recurring and, therefore, every entry in favour of the defendants over the title denied the plaintiff of her right to

inheritance which ought to have been by natural succession. Since the Will has already been set-aside and so the judgment and decree and, therefore, only cause having arisen the suit is well within the period of limitation and cannot by any means be construed to be barred by limitation and the findings of the first Appellate Court needs to be reversed.

Thus, in the light of what has been detailed and discussed above, there has been a sinister design by the sons in league with their father with the sole purpose to deny the lone daughter and sister of the present respondents Mehar Singh, Harpal Singh (through Lrs), Dhanwant Singh and Surjit Singh right to her share in the estate of the ancestral property has chosen a way firstly through a claim of family partition and securing a decree on the basis of the same and to be double sure had managed to get a Will fabricated purported to have been executed by the deceased which stands unproved is a hall mark of the male chauvinism and thereby defeat the very

purpose for which the amendment has come about to the Hindu Succession Act.

Thus, in view of the admitted fact that Bija Singh left behind four sons and one daughter and in view of these findings there being five legal heirs the entire property left behind by the deceased Bija Singh his estate ought to have devolved upon on all the five heirs in accordance with natural succession each getting $1/5^{\text{th}}$ share in this suit property. However, it is made clear that since the filing of the suit there might have been alienations by any of the co-sharers and if it is so, any alienation so made shall be out of the share of that very party.

In view of the foregoing discussion, the present appeal needs to be accepted thereby setting aside the impugned judgment and decree. No order as to costs.

December 16, 2020**(FATEH DEEP SINGH)**

amit rana

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No