

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

RSA-5-2021 (O&M)
Date of decision : 19.01.2021

Tinku @ Malkhan

...Appellant

Versus

Saurabh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Jayender S. Chandel, Advocate for the appellant.

ANIL KSHETARPAL, J.

CM-52-C-2021

For the reasons stated in the application, which is duly supported by an affidavit, delay of 03 days in filing the present appeal is condoned.

Application is allowed.

CM-53-C-2021

For the reasons stated in the application, which is duly supported by an affidavit, delay of 564 days in re-filing the present appeal is condoned.

Application is allowed.

Main case

The plaintiff-appellant has filed this Regular Second Appeal challenging correctness of concurrent findings of fact arrived at by both the Courts while dismissing his suit seeking decree of declaration that he is

owner of the suit land to the extent of 3/10th share as the suit property is Joint Hindu Family Coparcenary Property. The plaintiff also claims that the property detailed in para 1 of the plaint is also ancestral.

Some facts are required to be noticed. The name of plaintiff's grandfather was Ghasitu son of Kapuri son of Dundi.. He (Ghasitu) married twice during his lifetime. He firstly married with Smt. Zile and from the aforesaid wedlock, a son Tarsem was born. Thereafter, Ghasitu again got married with Phulo Devi, defendant No.4 and out of that wedlock, late Sh. Rajpal was born. The plaintiff is the son of late Sh. Rajpal. Ghasitu also had two daughters, however, it is not clear that whether they were born from his first or second marriage. It is not in dispute that late Sh. Rajpal died on 08.01.1993 when the plaintiff was barely 2 years and 3 months old. His mother (the widow of Rajpal) i.e. Rani re-married with Avtar Singh, resident of Una (State of Himachal Pradesh), after a period of 9 months of death of Rajpal. It is the case of the plaintiff that he went with his mother and resided there. The plaintiff claims that there he was also called Raman. The plaintiff himself has pleaded that late Sh. Ghasitu, who died in May 2003, apart from inheriting certain property from his father Kapuri, purchased various pieces of agriculture land, details whereof have been given in para 9 and 10 of the plaint.

The suit was contested by defendant No. 1 to 3. It was pleaded that the property was not Joint Hindu Family Coparcenary Property. Ghasitu after the sale of gold jewelry left behind by Smt. Zile, purchased the agriculture land. It was further pleaded that he was also doing business of dairy farming, sale and purchase of buffaloes and bulls. It was further

pleaded that in a family settlement, the land in dispute came to the share of defendants and the same was accepted by Ghasitu in a civil suit, resulting in a Court decree dated 14.09.1995. Apart therefrom, the defendants further set up a registered Will allegedly executed by late Sh. Ghasitu on 19.06.2002. It is significant to note that the defendant No. 4 to 7 admitted the claim of the plaintiff.

The plaintiff appeared in evidence as PW1 and produced various documents. On the other hand, the defendants examined Smt. Memo Devi-the widow of Tarsem Singh as DW1, Hari Singh, Registration Clerk as DW2, Baldev Singh, Document Writer as DW3, Om Parkash, Numberdar as DW4 and Rahan Singh as DW5. They also produced various documents.

Learned trial Court as well as First Appellate Court, on appreciation of evidence, have concurrently recorded that the plaintiff has failed to prove that the suit property was Joint Hindu Family Property and, therefore, not entitled to 3/10th share in the suit property.

This Court has heard learned counsel for the appellant at length and with his able assistance perused the paper book.

Learned counsel for the appellant has submitted that the Civil Court decree dated 14.09.1995 is based upon an oral family settlement which is not permissible. He further submitted that the First Appellate Court has erred while returning the finding that the suit filed by the plaintiff was barred. He explained that the plaintiff filed the suit within a period of three years from date he attained the age of majority. He further submitted that Sh. Ghasitu purchased the land from the agricultural income of Joint Hindu Family Coparcenary Land and therefore, the Courts have erred in dismissing

the suit.

Before this Court examines the arguments of learned counsel, it is significant to note certain facts:-

- 1) It is not in dispute that the plaintiff has inherited the land measuring two acres from his father late Sh. Rajpal. Still further, the plaintiff had also received a residential plot from Smt. Phulo Devi, his grandmother. The plaintiff had not disclosed these facts.
- 2) It is the case of the plaintiff himself that after the death of late Sh. Rajpal (his father), Smt. Rani re-married with Avtar Singh, resident of Una (State of Himachal Pradesh) and the plaintiff resided there.
- 3) The plaintiff has himself pleaded that the land mentioned in para 9 and 10 of the plaint was purchased by Ghasitu.
- 4) The plaintiff has neither examined his grandmother Smt. Phulo who in the written statement admitted the claim of the plaintiff in the suit nor produced Smt. Rani-his mother, who had also supported the case of the plaintiff.

Now, the stage is set to consider the merit in the arguments of learned counsel for the appellant.

As regards first argument, it may be noted here that the oral family settlement is permissible and learned counsel for the appellant failed to draw attention of the Court to any provision of law requiring that a family settlement must be in writing. Still further, in the present case, existence of the family settlement has been admitted by Ghasitu in the Court, resulting in judgment and decree dated 14.09.1995. Ghasitu remained alive for 8 long years, thereafter, but never questioned the decree.

Next argument of learned counsel for the appellant does have a merit. The plaintiff was born on 08.08.1990. He attained the age of majority in August 2008, whereas the suit was filed on 08.11.2010. Thus, the suit cannot be said to be beyond time. The finding of the learned First Appellate Court to this extent is erroneous.

Next argument of learned counsel that the land which was purchased by Ghasitu through various sale deeds as mentioned in para 9 and 10 of the plaint is a coparcenary property, cannot be accepted particularly when the plaintiff has failed to lead reliable evidence to this effect. Except the bald statement of the plaintiff, who was born on 08.08.1990, no other evidence has been produced. As noted above, the plaintiff has not produced his grandmother and his mother. The plaintiff has also not examined any other elder member of the family or villager. Still further, there is no evidence that Ghasitu had ever thrown the self-acquired property in common stock.

Keeping in view the aforesaid facts, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below. Hence, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid judgment.

19.01.2021

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No