IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

111 **RSA-1533-2020 (O&M)**
Decided on: 15.01.2021

Madhu Aggarwal ....Appellant

Versus

Jagdish Parshad Jain & others ....Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Sagar Aggarwal, Advocate, for the appellant.

(The proceedings are being conducted through video conferencing, as per instructions.)

G.S. SANDHAWALIA, J. (Oral) :-

The plaintiff-appellant is aggrieved against the concurrent findings of the Courts below whereby the claim for share in the 5 kanals 16 marlas of land on account of being a coparcenary member, has been rejected. The Addl.Civil Judge (Sr.Division) Ganaur, vide judgment dated 25.05.2018 had dismissed the suit by coming to the conclusion that the property was not found to be ancestral property which was sine-qua-non if the suit was to be allowed. The said judgment had been upheld by the Addl.District Judge, Sonepat on 13.02.2020.

The reasoning given by the Courts below is that the plea of the plaintiff that the suit land was purchased by the defendants from joint fund was not tenable and liable to be rejected. Thus, it came to the conclusion that the land had not been purchased by way of funds received out of the joint Hindu family business. It was noticed that the presumption is that the property is ancestral and the onus lies heavily on the person ascertaining it to be. Reliance was placed upon **Gulab Singh Vs. Mam Chand & others 2009 (2) RCR (Civil) 428 (P&H)** and **Sham Kaur Vs. Hari Singh 1971 CLJ 702 (P&H)** in this regard. The claim for declaration that the transfer deed dated 20.11.2014 in favour of the sons and the consequent mutations also which had been challenged were accordingly not liable to be set aside.

Counsel for the appellant has vainly argued that the funds had been generated from the business of a halwai shop at Railway Road, Ganaur which was being conducted by Bishamber Dayal, the great-grandfather of the plaintiff. The application for placing additional evidence on record as Annexures A-1 to A-3 was also filed bearing CM-4682-C-2020 to show that from the joint funds a shop had been purchased. The brothers of the appellant's father had filed the suit for declaration claiming so and the suit had been decreed on the basis of the admission made by the appellant's father and thus, it was contended that the parties were staying together and having a joint family.

The Courts below have rightly noticed that in order to prove that the suit land had been purchased on 20.11.2014 (Ex.P-16) from Sham Lal for Rs.14,500/- no tangible evidence worth the name had been produced to show that it was from the funds of a joint Hindu family business. The appellant's father was held to be doing business of hardware in Chawri Bazar at Delhi in the year 1971-78 and the plaintiff had admitted that her father used to run a factory in Delhi from 1964 to 1966 and thereafter, had done cloth business from 1967 to 1971 at

Railway Road, Ganaur. It was noticed that there were assessment orders passed under the Income Tax Act, 1961 and Jagdish Prashad Jain, father of the appellant had a separate income from his brothers from 1978 and he was also a proprietor of Gupta Trading Company and had income in the assessment year 1973-74 of Rs.4200/-, 1974-75 of Rs.6000/- and from 1975-76, of Rs.7500/-. Admittedly, the plaintiff, in order to prove her case, could not bring on record any material to show that the purchase of the land in the year 1981 was from the account of her great-grandfather or from the funds of the joint Hindu Family. Only the voters list had been brought on record to show that members were living together. Similarly, the assessment registers of the house whereby the family members were living together as such were proved. Thus, there is no reliable evidence to show that the purchase of the land was from the funds which were from the halwai shop which was being run by the great-grandfather. Rather the respondents have also produced Bimal Parshad, the paternal uncle of the appellant and the brother of her father and Naresh Jain, who are family members to depose that it was self-acquired property and that the father of the appellant was not involved in the running of the halwai shop.

The Lower Appellate Court also examined the issue threadbare and framed the following 2 questions of law for determination:

> "1. Whether or not the suit property is ancestral property of the parties to the proceedings which was purchased from Hindu Joint Family fund in the name of defendant No.1

Jagdish Parshad Jain?

2. If question No.1 is proved in affirmative whether or not the impugned transfer deeds and mutations thereof are legally valid and perfect?"

The same have been answered against the appellant. Resultantly, it came to the conclusion that once the property was self-acquired, he had right to transfer the same vide transfer deeds dated 20.11.2014. It is pertinent to notice that the defendants have been very fair to the appellant in as much as in their written statement, they have averred that there is property lying at Village Kirthal in the name of Bishambar Dayal and the plaintiff has every right to take her share in the said property. Thus, it is apparent that the Courts below have come to a factual finding that the appellant has not been able to prove that the funds were taken from the joint Hindu family business and therefore, in the absence of the property being ancestral in nature, the suit had rightly been dismissed.

Reliance upon the additional evidence would be of no help to the appellant since it was pertaining to the shop and as per the suit itself, it was mentioned that there was an oral family settlement whereby the brothers of respondent No.1 had been declared as owners of the said shop. Written statement was filed by the father of the appellant admitting the said claim on which a consent decree had been passed on 22.02.1986 (Annexure A-3). It is a matter of fact that consent decrees passed between parties closely related are meant to crystallize and finalize the family settlement inter se. The admission that the shop was purchased from the joint Hindu family, would not be of any help in the decision of the present appeal. It is to be noticed that the great-grandfather, Bishambhar Dayal expired way-back in 1974 and as noticed, the appellant's father was already an independent entity and was filing income tax returns in a separate capacity in 1973-74. Even a suggestion was put by counsel for the plaintiff-appellant to the respondent that he was independent from the year 1958 from his brothers and his income was separate. In such circumstances, the purchase in 1981 cannot be held to be in any manner from the funds of the joint Hindu family business and the suit had rightly been dismissed by the Courts below.

Resultantly, in view of the above discussion, this Court does not feel that any question of law arises for consideration in a Regular Second Appeal. Accordingly, the present appeal is dismissed in limine along with the application for additional evidence.

15.01.2021 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No