

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2070 of 2008(O&M)

Date of decision:01.10.2021

Avtar Singh (since deceased) through LRs

...Appellant

Versus

Joginder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Chadha, Sr. Advocate, with
Mr. Lakshay Bector, Advocate,
for the appellant.

Mr. Amit K. Saini, Advocate,
for respondent no.1, 3 and 4.

ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

1. Through this regular second appeal, the appellant calls into question the concurrent findings of fact arrived at by the Courts below while dismissing the suit filed by the plaintiff(appellant herein) for grant of decree of joint possession with the consequential relief of permanent injunction. In essence, the plaintiff prays for a decree of declaration that the decree dated 27.03.1995 passed in Civil Suit No.201 of 1994 is illegal and void.

Some facts are required to be noticed.

FACTS

2. As per the record available, Samund Singh transferred some part of the property including the suit property in favour of his four sons in

the year 1937. In the revenue record, the mutation of the gift was entered and sanctioned on 24.08.1937. Joginder Singh son of Samund Singhas married twice. From the first wife-Bachan Kaur, the plaintiff-Avtar Singh was born, whereas from the second wife-Surjit Kaur, 11 children were born. The plaintiff claims that since the property is Joint Hindu Family Coparcenary property therefore, the decree suffered by Joginder Singh on 27.03.1995 is illegal, null and void.

2.1 The defendants contested the suit with the assertions that the property is not Joint Hindu Family Coparcenary property and the plaintiff after separating from the family, has been residing in Ludhiana for the last many years. Defendant No.5 admitted the claim of the plaintiff.

2.2 Both the courts, on appreciation of the evidence, have found that the plaintiff has failed to prove that the suit property is Joint Hindu Family Coparcenary property. It has also come on record that one of the brothers of Joginder Singh namely Chanan Singh had bequeathed his property in favour of Dalip Singh, Joginder Singh and Balwant Singh on the basis of a registered Will dated 28.03.1980 and the plaintiff has failed to separately identify the aforesaid property inherited from Late Sh. Dalip Singh.

2.3 On 06.12.2011, while admitting the appeal, the following substantial questions of law were framed:-

“1. Whether the ancestral property received by Joginder Singh, by way of oral gift from Samund Singh, could be taken as self-acquired property?

2. Whether Joginder Singh could transfer the said ancestral property by way of collusive decree in favour of

his sons from his second wife (respondents No.2 to 5) while ignoring the appellants i.e. sons from his first wife?

3. Whether the suit for joint possession without claiming share in the property by co-parcner is maintainable for setting aside the decree dated 27.03.1995 as well as the mutation dated 18.5.1995?”

This Bench has heard the learned counsels for the parties at length and with their able assistance perused the judgments passed by the courts below along with the record which had been requisitioned. Both the counsels have also filed their written arguments along with the judgments relied upon.

**ARGUMENTS OF LEARNED COUNSELS
REPRESENTING THE PARTIES**

3. Learned senior counsel representing the appellant contends that the transfer of immovable property worth more than Rs.100/- could not be effected through an oral gift from Samund Singh to his 4 sons Chanan Singh, Dalip Singh, Joginder Singh and Bant Singh. He contends that in the absence of a registered document, the gift is not valid. Consequently, he contends that the property shall be deemed to devolve by natural succession and hence the nature of property as Joint Hindu Family Coparcenary Property stands proved. He further relies upon the pleadings in Civil Suit No.42 of 2006 filed by Defendant no.2, 5, 6 and 7 against Joginder Singh wherein it has been asserted that 55 kanals and 1 marla of land is Hindu Family's Ancestral Coparcenary Property. He further contends that the mutation does not confer any right or title and therefore, is not required to be

challenged and thus, the courts have erred in dismissing the suit on the ground of being barred by limitation.

3.1 On the other hand, the learned counsel representing the respondents, while defending the judgments passed by the courts below has contended that the transfer of property by Samund Singh in favour of his 4 sons by way of an oral gift was never questioned and therefore, the arguments of the learned senior counsel representing the appellant is beyond pleadings. He further contends that it has come on record that Samund Singh transferred the property in favour of his 4 sons in the year 1937 when the relevant provisions relating to gift of the immovable property in the Transfer of Property Act, 1887 were not applicable to the State of Punjab and the oral gift of property of any value was permitted at that time. He further contends that some part of the property had come from Chanan Singh on the basis of a registered Will dated 28.03.1980. He further submitted that the plaintiff has failed to prove the excerpt Ex.P2 as Kashmir Singh, Office Kanungo, was examined as PW3 but he admitted that the entire record of documents has been prepared with the help of one Harcharan Singh (retired kanungo). He admitted that Harcharan Singh (retired kanungo) had read the documents which are written in 'Urdu'. Further, the aforesaid Harchand Singh who had read the documents and prepared the summery has not been examined. Kashmir Singh also failed to produce the entire revenue record. He, further, while drawing attention of the Court to the deposition of PW4-Mohan Singh, contends that the record of consolidation proceedings was also not produced, therefore, there is no evidence to connect the property with the pre-consolidation record. He, while drawing attention of the Court to the deposition of the plaintiff, has contended that admittedly the plaintiff

has been residing in Ludhiana for the last 30-35 years and has constructed his separate house there. He, hence, submits that the plaintiff had severed relationship with his family long time back.

After having heard the learned counsels for the parties, this Bench now proceeds to analyze the contentions.

DISCUSSION

4. At this stage, it would be relevant to note that the learned trial court on examination of the pleadings, framed the following issues:-

“1. Whether the plaintiff is entitled to decree for joint possession of suit land?OPP

2. Whether decree dated 27.03.1995 in favour of defendants no.2 to 7 is null and void, if so its effect?OPP

3. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP

4. Whether the suit of the plaintiff is properly valued?OPP

5. Whether the suit of the plaintiff is not maintainable in the present form?OPD

6. Relief.”

4.1 From the examination of the pleadings, it becomes crystal clear that the plaintiff (appellant) never questioned the correctness of THE transfer of the property via gift by Samund Singh in favour of his 4 sons in the year 1937. Therefore, the plaintiff cannot be permitted to set up a new ground in the regular second appeal for the first time. Accordingly, the judgment relied upon by the learned senior counsel in **Smt. Gomitibai(dead)**

through LRrs and others vs. Mattulal (dead) through LRs., (1996)11 SCC

681 is not applicable.

4.2 The next argument of the learned counsel is based upon the plaint filed by defendant no.2,5, 6 and 7, who are the plaintiffs in Civil Suit No.42 of 2006. It may be noted here that such plaint is only the pleadings of one of the party-defendant and such an admission does not bind the other defendants and therefore, the admission in itself does not prove that the property is Joint Hindu Family Ancestral Coparcenary Property, particularly when it is proved on the file that Joginder Singh received some part of the property by way of an oral gift from his father and the remaining inherited from his brother through registered Will. Consequently, it is not appropriate to reverse the findings while relying upon the pleadings of one of the party in some other suit.

4.3 The next argument of the learned senior counsel is with regard to the mutation. There is no doubt that the mutation neither confer any right nor any title. It does not create or extinguish title. The mutation entry is only meant for the purposes of updating the revenue records.

4.4. The next argument of the learned counsel with regard to limitation requires no discussion by this court because the plaintiff has already failed to make out a case for interference in the concurrent findings of fact.

5. Now let's analyze the substantial questions of law framed by the Court.

5.1 As regards question No.1, it may be noted that some part of the suit property was received by Joginder Singh along with his 3 other brothers by way of an oral gift, hence, it shall be treated as his self acquired property.

There is no evidence that Samund Singh was only having 4 sons and he

gifted the property in accordance with their share in the Joint Hindu Family Coparcenary Property.

5.2 As regards question No.2, it may be noted that in the absence of evidence to prove that the property in the hands of Joginder Singh was ancestral, question no.2 cannot arise.

5.3 As regards question no.3, it also does not arise because the plaintiff has failed to prove the basis of his case.

RELIEF

In view of the aforesaid discussion, finding no merit, the appeal is dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

October 01st, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No