

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

RSA No. 1666 of 2020(O&M)

Date of Decision: January 11 , 2021.

Karamjit Kaur @ Harbans Kaur

..... APPELLANT

Versus

Gurdev Kaur @ Debo and others

..... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Bhavyadeep Walia, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellant-plaintiff has filed this appeal challenging judgments and decrees dated 08.09.2016 and 01.04.2019 passed by the learned Additional Civil Judge (Senior Division), Patiala and learned Additional District Judge, Patiala, respectively, whereby her suit for declaration, joint possession and permanent injunction has been dismissed.

Appellant-plaintiff filed suit for declaration to the effect that she is owner of 1/3rd of the suit property and that transfer deed dated 08.05.2006 executed by respondent No.2-Gurdial Singh, her father, in favour of respondent No.1-Gurdev Kaur @ Debo i.e., daughter-in-law of Gurdial Singh is illegal, null and void. She also prayed for joint possession and permanent injunction for

restraining the defendants from transferring or alienating the suit property. It is pleaded by the plaintiff in her plaint that defendant-Gurdial Singh (her father) inherited 1/6th share of the property of his father, Norata Singh and mutation of the property in favour of Norata Singh was sanctioned from his father, Jawala Singh by way of inheritance. Thus, the suit property is claimed to be ancestral coparcenary. Gurdial Singh had one son, namely, Labh Singh (plaintiff's pre-deceased brother) and a daughter i.e., the present appellant-plaintiff. Gurdial Singh's wife had died. Labh Singh is survived by his wife and two daughters. In this manner, appellant-plaintiff claimed ownership of the property in question to the extent of 1/3rd. Transfer deed dated 08.05.2006 executed by Gurdial Singh in favour of Gurdev Kaur is stated to be illegal, null and void. Earlier suit for declaration and injunction against Gurdial Singh and Gurdev Kaur, filed by the present appellant, was dismissed on 21.04.2013. Appeal challenging the same was also dismissed. However, the transfer deed has been challenged in the present suit while claiming that it was not executed at the time of institution of the earlier suit.

The suit was contested by respondents-defendants on various grounds including the ground that suit was barred by principle of res-judicata. Written statement on behalf of defendants No.1 to 4 was filed. It is denied that property in question is coparcenary and ancestral. Gurdial Singh claimed to have become owner of the property in question on the basis of decree dated 29.03.1985 passed by the then Sub Judge (IInd Class), Patiala in favour of Ranjit Singh and Gurdial Singh in civil suit filed against Norata Singh. Defendants No.5 to 10, 12 and 13 also contested the suit and filed separate written statement. It is stated that

they have no concern with the property left by Gurdial Singh. They are owners in possession of the land as per their shares and they have no connection or concern with defendants No.1 to 4. Dismissal of the suit was sought.

Replications were filed and from pleading of the parties, following issues were framed by the learned trial court:-

1. Whether plaintiff is entitled to declaration as prayed for? OPP
2. Whether plaintiff is entitled to joint possession as prayed for? OPP
3. Whether plaintiff is entitled to permanent injunction as prayed for?OPP
4. Whether suit is not maintainable? OPD
5. Whether suit is barred by principle of res judicata? OPD
6. Relief.

Evidence was led by the plaintiff and the defendants in support of their respective stands. Learned trial court on considering the evidence on record, facts and circumstances concluded that the property is not proved to be ancestral property. Suit filed by the present appellant was accordingly dismissed by the learned Additional Civil Judge (Senior Division), Patiala vide judgment and decree dated 08.09.2016. Appeal preferred by the plaintiff was also dismissed by the learned Additional District Judge, Patiala vide judgment and decree dated 01.04.2019.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant has vehemently argued that both the learned courts below have grossly erred in dismissing the suit filed by the appellant-plaintiff. It is argued that appellant is admittedly the daughter of Gurdial Singh and is thus entitled to 1/3rd share in the property. Therefore, transfer deed dated 08.05.2006 executed by Gurdial Singh in favour of his

daughter-in-law, Gurdev Kaur @ Debo i.e., the widow of Labh Singh, is illegal, null and void qua her rights. It is contended that suit property was originally owned by Jawala Singh son of Attar Singh and his land was inherited by his sons, Norata Singh, Kartar Singh, Kapur Singh – his sons and daughter, Kartar Kaur in equal share as per mutation No.154 (Ex.P6). After the death of Norata Singh, his share was inherited by his sons Ranjit Singh and Gurdial Singh on basis of decree as reflected in mutation No.224 (ExP7). Gurdial Singh, it is submitted, had no right, whatsoever, to execute the transfer deed in favour of any person. Thus, the said deed should be declared illegal, null and void.

Learned counsel for the appellant further submits that previous decree dated 12.05.2006 (Ex.D10) has no effect on the rights of the plaintiff-appellant. Both the learned courts below have wrongly relied upon the said judgment and decree to non-suit the appellant. It is thus prayed that the present appeal be allowed, both the judgments and decrees be set aside and suit filed by the plaintiff be allowed throughout.

I have heard learned counsel for the appellant and have gone through the file as well as photocopies of certain documents circulated during the course of hearing on the WhatsApp group created for the purpose of Video Conferencing.

There is no dispute regarding the relationship between contesting parties. Gurdial Singh is father of plaintiff, Gurdev Kaur is her sister-in-law (predeceased brother's wife) and respondents No.3 and 4 are plaintiff's nieces (brother's daughters). Learned counsel for the appellant is unable to deny that appellant-plaintiff, Karamjit Kaur had earlier filed civil suit No.185-T dated 22.04.2003 against her father, Gurdial Singh for declaration to the effect that she

has a right/share to the extent of 1/3rd share in the land owned by him (present suit property). Certified copy of the plaint in the abovesaid suit is on record as Ex.D9. Admittedly, said suit was dismissed by the learned Civil Judge (Junior Division), Patiala vide judgment and decree dated 12.05.2006 (Ex.D10). It is specifically held in the said judgment and decree (Ex.D10) that Gurdial Singh has not received the suit land by way of inheritance, but by way of a decree on the basis of a statement given by Norata Singh in favour of Gurdial Singh and Ranjit Singh. Suit property was earlier owned by Jawala Singh as per Ex.P6 and was inherited by Norata Singh, Kartar Singh, Kapur Singh and Kartar Kaur. Share of Kartar Kaur was transferred in favour of Norata Singh, Kartar Singh and Kapur Singh pursuant to decree dated 30.01.1980. It is categorically held in judgment dated 12.05.2006 that the suit property is not joint Hindu coparcenary property. Appeal filed by the present appellant-plaintiff challenging the judgment and decree dated 12.05.2006 was also dismissed by the learned Civil Judge(Junior Division), Patiala vide judgment and decree dated 25.10.2006. Plaintiff while deposing as PW1 before the learned trial court has admitted dismissal of her earlier suit as well as her appeal challenging the same. Transfer deed dated 08.05.2006 (Ex.D6) has been executed by Gurdial Singh in favour of Gurdev Kaur @ Debo i.e., his daughter-in-law being widow of his pre-deceased son, Labh Singh. Labh Singh is admittedly survived by his widow and two daughters. Gurdial Singh was well within his rights to execute transfer deed dated 08.05.2006 in favour of his widow daughter-in-law.

In the given factual matrix as above, both the learned courts below have returned concurrent findings of fact after correct and proper appreciation of

the evidence on record. Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

No other argument has been raised.

There is a delay of 535 days in filing of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is accordingly disposed of.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 08.09.2016 and 01.04.2019 passed by the learned Additional Civil Judge (Senior Division), Patiala and learned Additional District Judge, Patiala, which warrants any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

January 11 , 2021.
'om'

(LISA GILL)
JUDGE

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