

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

RSA No. 4428 of 2018(O&M)

Date of Decision: October 11 , 2021.

Jagdish Singh and another

..... APPELLANTS

Versus

Harchand Singh and others

..... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Arjun Atri, Advocate
for the appellants.

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.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This appeal has been filed challenging judgments and decrees dated 19.12.2012 and 16.02.2018 passed by the learned Civil Judge (Junior Division), Rajpura and the learned Additional District Judge, Patiala, respectively, whereby suit for declaration filed by the appellant/plaintiffs was dismissed.

Brief facts necessary for the adjudication of the case are that, appellant/plaintiffs filed a suit for declaration that appellant/plaintiff No.1 and respondents/defendants No.1,2,3 and proforma respondents/defendants No.6 and 7 are owners-in-possession to the extent of 1/35th share each, whereas appellant/plaintiff No.2 and proforma respondents/defendants No.4 and 5 are

owners-in-possession to the extent of 1/35th share jointly. Further declaration is sought that sale deed dated 23.11.2004 and TabdilMalkiatnama dated 23.11.2004 executed by defendant No.3 in favour of defendants No.1 and 2 in respect of the land, as detailed in the plaint, being without consideration are not binding on the rights of the plaintiffs and proforma defendants. Subsequent entries in the revenue record pursuant to said sale-deed and TabdilMalkiatnama are sought to be set aside and corrected. Plaintiffs also seek permanent injunction restraining the defendants No.1 and 2 from further selling/alienating the suit land. It is pleaded that suit land was previously owned by Sunder Singh and after his death, Mihan Singh (defendant No.3) succeeded him. It is stated that Mihan Singh, defendant No.3, is the father of plaintiff No.1 and defendants No.1 and 2 and the grandfather of plaintiff No.2. Proforma defendants No.4 and 5 are the legal representatives of Ujagar Singh (predeceased son of Mihan Singh) and proforma defendants No.6 and 7 are the daughters of defendant No.3-Miham Singh. Suit property is stated to be ancestral, coparcenary property in the hands of defendant No.3-Miham Singh. It is further pleaded that Miham Singh had no authority to execute the transfer deed in favour of defendants No.1 and 2 to the extent of 1/5 share without the consent of other coparceners. Miham Singh is also stated to have executed sale deed dated 23.11.2004 in favour of defendants No.1 and 2 under their influence in respect of the land as detailed in the plaint. It is further stated that defendants No.1 and 2 are intending to sell the suit land on the basis of the wrong entries in the revenue record.

Respondents/defendants No.1 and 2 contested the suit by filing separate written statements. Various preliminary objections were taken in the written statements and averments on merits were denied. Defendants No.1 and 2

in their separate written statements denied the suit property to be ancestral, coparcenary property. Suit land, it is stated, was inherited from Sunder Singh by Mihan Singh, Mohan Singh (his sons), DayaKaur, MohinderKaur (his daughters) and HarnamKaur (his widow). HarnamKaur gave her share to Mohan Singh alone whereas DayaKaur and MohinderKaur transferred their share to plaintiff No.1- Jagdish Singh, Ujjagar Singh, Harchand Singh and Bhagwant Singh equal share. It is averred that plaintiff No.1 and Ujjagar Singh separated themselves from defendant No.3 during his life time about 22 years back in respect of business and kitchen and agricultural work was also separate between the parties. It is stated that Mihan Singh was residing with defendant No.1 and he is being served by defendant No.1 and family. Defendant No.3-Mihan Singh was sole owner-in-possession of the suit land and had every right to sell or transfer the same in favour of defendants No.1 and 2. Defendant No.2, in his written statement, stated that Mihan Singh sold the suit property for his legal necessity as he was suffering from multiple diseases due to old age and he was in dire need of money. It is pleaded that mutation on the basis of sale deed has been rightly sanctioned. Dismissal of the suit was prayed for.

Proforma defendants No.4 and 5 admitted the claim of plaintiffs in their written statement.

Following issues were framed by the learned trial court, on the basis of pleadings of the parties:-

1. Whether sale deed as well as TabdilMalkiatnama dated 23.11.2004 bearing Vasika No.6651 is not binding upon the plaintiff and liable to be set aside being without consideration and further liable to be corrected as prayed for? OPP
2. Whether the suit land is ancestral coparcenary property of the parties? OPP

3. Whether the TabdilMalkiatnama was executed without legal necessity? OPP
4. Whether the plaintiffs are entitled to declaration as prayed for? OPP
5. Whether the suit of plaintiff not maintainable? OPD
6. Whether the plaintiffs have no locus standi to file the present suit? OPD
7. Whether the plaintiff has no cause of action? OPD
8. Whether the suit of the plaintiff is not valued for the purpose of court fee? OPD
9. Relief.

Evidence was led by both the parties in order to substantiate their claims.

Learned trial court on considering the evidence on record, facts and circumstances of the case, dismissed the suit filed by the plaintiffs. It is concluded that plaintiffs failed to prove the suit property to be ancestral coparcenary property. Appeal preferred by the appellants/plaintiffs was also dismissed by the learned Additional District Judge, Patiala vide judgment and decree dated 16.02.2018.

Aggrieved therefrom, present regular second appeal has been filed by the appellants/plaintiffs.

Learned counsel for the appellants vehemently argues that both the learned courts below have erred in law and on facts in dismissing the suit of the appellants/plaintiffs. It is argued that suit property is clearly proved to be ancestral coparcenary property on the basis of evidence on record. In fact, admission of DW1 Bhagwan Singh son of Mihansingh, it is contended, is sufficient to prove the case of the plaintiffs. Both the learned courts below need not have gone any further and should have decreed the suit of the plaintiffs on the

said admission itself. It is further submitted that Jamabandies (Ex.P24 to P26) and mutation (Ex.P27/D) also reflect the ancestral nature of the coparcenary property, in question. Learned counsel further submits that there has been total and complete mis-appreciation of the evidence on record. Excerpt report (Ex.PW3/A) produced by the plaintiffs has been misread by both the learned courts below. Learned counsel refers to cross-examination of DW1 Bhagwan Singh, copy of which has been circulated on WhatsApp group created for the purpose of Video Conferencing, to buttress his arguments. It is thus prayed that this appeal be allowed and the impugned judgments and decrees be set aside.

I have heard learned counsel for the appellants and have gone through the file.

Relationship between the parties is not in dispute. Appellants/plaintiffs filed the suit for declaration to the effect that plaintiff No.1, defendants No.1, 2, 3 and proforma defendants No.6 & 7 are owners-in-possession to the extent of 1/35th share each, whereas plaintiff No.2 and proforma defendants No.4 and 5 are owners-in-possession to the extent of 1/35th share jointly, of the property in question and that sale-deeds dated 23.11.2004 and transfer deed of even date, executed by defendant No.3 in favour of defendants No.1 and 2 are not binding on the rights of the plaintiffs and proforma defendants. Entire case of the plaintiffs rests on the plea that suit property in the hands of Mihan Singh is ancestral coparcenary property and that Mihan Singh had no authority to alienate or transfer the land in favour of defendants No.1 and 2 in any manner.

Both the learned courts below have returned a clear-cut finding of fact, that the plaintiffs failed to prove the property in question to be ancestral

coparcenary property. There is a specific reference to the revenue record i.e., the Jamabandi as well as the Excerpt report (Ex.PW3/A) by both the learned courts below, which indicate that Mihaan Singh alone did not succeed to the property of his father Sunder Singh. HarnamKaur widow of Sunder Singh as well as DayaKaur and MohinderKaur daughters of Sunder Singh and Mohan Singh, another son of Sunder Singh, are also reflected to be owners of the suit property. It is apparent from Mutation No.1658 that property of Sunder Singh was transferred in five shares in favour of the widow, two sons and two daughters.

Doubtlessly, the plaintiffs have produced pedigree table (Ex.P28), but the same cannot be the evidence to prove nature of the property in question. Much stress has been laid by learned counsel for the appellants on the so-called admission of DW1 Bhagwan Singh about the nature of the property. I have perused cross-examination of DW1 Bhagwan Singh, a copy of which has been circulated on WhatsApp group created for the purpose of Video Conferencing. Learned counsel for the appellants is unable to deny that DW1 Bhagwan Singh, apart from stating that he could not able to tell whether Albel Singh was father of Kahan Singh and Gopal Singh, has stated that they purchased the share of sisters of their father, Mihaan Singh after making payment to them. It is to be noticed at this stage that learned District Judge, Patiala has succinctly and correctly dealt with the arguments on behalf of the appellants in regard to the so-called admission made by DW1 Bhagwan Singh. Needless to say, the plaintiffs were required to prove their case by leading clear-cut and cogent evidence in this regard. So-called admission of DW1 Bhagwan Singh does not in any manner come to the aid of the plaintiffs, especially in view of the documentary evidence on record, which does not indicate the property to be ancestral coparcenary

property. It is a settled position of law that until and unless a party claiming the property to be ancestral coparcenary property proves the same be so on the basis of evidence on record, the same cannot be presumed to be so. Plaintiffs have indeed failed to prove the suit property to be ancestral coparcenary property in the hands of Mihaan Singh.

No other argument has been raised.

Both the learned courts below have returned correct concurrent findings of fact after proper appreciation of the evidence on record. Learned counsel for the appellants 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.

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 19.12.2012 and 16.02.2018 passed by the learned Civil Judge (Junior Division), Rajpura and the learned Additional District Judge, Patiala, respectively, which warrant any interference by this Court.

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

October 11, 2021.
'om'

(LISA GILL)
JUDGE

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