

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2362-1995 (O&M)

Reserved on: 20.05.2022

Date of decision: 04.07.2022

SWARNO DEVI

..Appellant

Versus

PARAMJIT SINGH AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Sr. Advocate
with Mr. Dhruv Mittal, Advocate
for the appellant.

Mr. Chetan Mittal, Sr. Advocate
with Mr. R.S. Madan, Advocate
Mr. Mayank Aggarwal, Advocate, and,
Mr. Mahender Joshi, Advocate
for respondents.

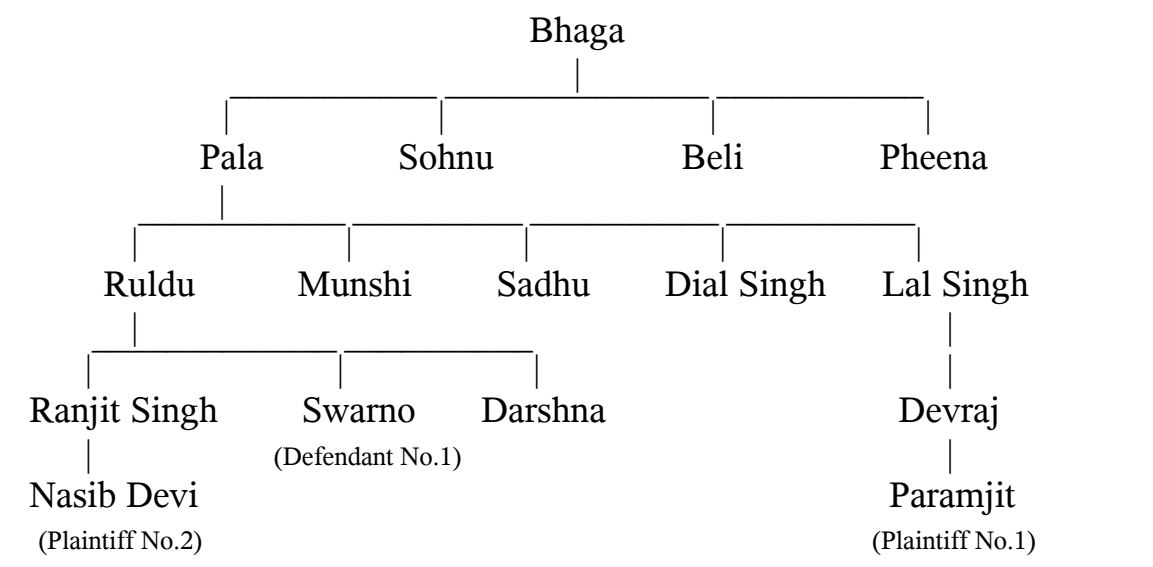
ANIL KSHETARPAL, J.

1. The defendant has filed the present appeal challenging the correctness of the concurrent findings of fact arrived at by the Courts below in a suit for grant of declaration to the effect that the plaintiffs are owners in joint possession to the extent of 2/3rd share in the land measuring 47 kanals and 15 marlas situated in the Revenue Estate of village Daggan, Tehsil Dasuya and in the alternative, claim the relief of the joint possession qua the suit land.

2. After having heard the learned Senior Counsels representing the parties at length, this Court is of the considered view that the matter is required to be remanded back to the trial Court for deciding certain issues afresh, hence, it will not be appropriate to discuss the entire evidence. In order to complete the narration of facts, certain relevant facts are being

noticed.

3. The dispute in the present case is with regard to the property left behind by Late Sh. Ruldu Ram. In order to understand *inter se* relationship between the parties, the following pedigree table would help in understanding the dispute.



4. The suit was filed by Sh. Paramjit Singh and Smt. Nasib Devi against Smt. Swarno Devi and Smt. Darshana Katoch. The plaintiffs claim that Sh. Ranjit Singh, the only son of late Sh. Ruldu Ram died 28 years before filing the suit which was filed on 29.04.1987. It is also the case of the plaintiffs that Smt. Nasib Devi has adopted Sh. Paramjit Singh as her son and late Sh. Ruldu Ram had only one son and two daughters. Late Sh. Ruldu Ram (son of Sh. Pala Ram) held joint family coparcenary property and on the death of late Sh. Ruldu Ram (16.03.1984), plaintiff No.1 being the only surviving coparcener is entitled to ownership and possession of the whole of the joint family coparcenary property by devolution. In the alternative, it is claimed that the plaintiff No.1 has become owner of half share of the total joint family coparcenary property on the basis of notional partition.

5. The defendant No.2 did not contest the suit, however, defendant No.1 contested the suit. She asserted that after the death of Sh.

Ranjit Singh, Smt. Nasib Devi left the matrimonial home about 32-33 years ago. After leaving the matrimonial home, she initially resided in village Raili with Sh. Mehenga for one year and then started living with Sh. Dev Raj (father of plaintiff No.1) as his wife. It is claimed that the suit property was not joint family ancestral coparcenary property and in fact, the coparcenary, even if existed, it did not survive as late Sh. Ruldu Ram was the only male member left in the family. It is also claimed that the property is self-acquired property and late Sh. Ruldu Ram bequeathed the entire property in favour of Smt. Swarno Devi (defendant No.1) by registered Will dated 24.03.1981, who resided with late Sh. Ruldu Ram even after her marriage and served the testator throughout his life in the absence of plaintiff No.2. Replication to the written statement was filed by the plaintiffs and the trial Court, on appreciation of pleadings, framed the following issues:-

- “1. Whether Smt. Nasib Devi plaintiff adopted Paramjit Singh as son for her husband Ranjit Singh? OPP*
- 2. Whether the suit land was coparcenary property of Ruldu Ram qua the plaintiffs? OPP*
- 3. Whether the plaintiffs are owners of the suit land to the extent of 2/3 share and are entitled to joint possession of the suit land? OPP*
- 4. Whether the plaintiffs have got no locus standi to file the present suit? OPD*
- 5. Whether the plaintiffs are estopped from filing the present suit by their acts and conduct and admission of the plaintiffs as alleged? OPD*
- 6. Whether the suit is barred under law as alleged? OPD*
- 7. Whether the suit is not maintainable in the present form? OPD*
- 8. Whether Ruldu Ram deceased executed a valid Will in favour of defendant No.1 on 24.03.81? OPD*
- 9. Relief.”*

6. In order to prove their case, Smt. Nasib Devi appeared as PW-1, whereas, Sh. Bidhi Chand was examined as PW-2.

7. On the other hand, defendants examined various witnesses

including Smt. Swarno Devi, Smt. Darshana Katoch (defendant No.2), Sh. Bishan Dass (attesting witness of the Will), Sh. Praveen Kumar (scribe of the Will) and other witnesses. The Will dated 24.03.1981, as also registered adoption deed dated 13.07.1983, were produced apart from the other documents.

8. The trial Court, on appreciation of evidence, decreed the suit filed by the plaintiffs to the extent of 1/10th share in the land measuring 213 kanals and 14 marlas. Two appeals preferred before the First Appellate Court by the plaintiffs as well as defendant No.1 were dismissed. The appeal was admitted for regular hearing. On requisitioning the record, it was found that the original record is not traceable. Thereafter, on the directions of the Court, the record has been partially reconstructed.

9. This Bench has heard the learned Senior counsels representing the parties at length and with their able assistance perused the paperbook and the partially reconstructed record.

10. Both the learned Senior counsels have filed their written arguments.

11. As per the findings recorded, the Will executed by late Sh. Ruldu Ram in favour of Smt. Swarno Devi dated 24.03.1981, has been proved by examining Sh. Bishan Dass @ Singh (attesting witness of the Will) and Sh. Praveen Kumar (scribe of the Will). The Will has also been proved by Smt. Darshana Katoch and PW-3 Sh. Karam Chand, Nambardar (the second attesting witness of the Will). Both the Courts have found that the land measuring 213 kanals and 14 marlas is joint family ancestral coparcenary property in which late Sh. Ruldu Ram had 1/5th share and on the adoption of Sh. Paramjit Singh by Smt. Nasib Devi in 1983, the

extent of 1/10th share in the land measuring 213 kanals and 14 marlas. On the other hand, the land measuring 24 kanals and 19 marlas is stated to have devolved upon defendant No.1 Smt. Swarno Devi by virtue of the Will Ex.D-1, dated 24.03.1981.

12. The learned Senior counsel representing the appellant while relying upon the judgment passed in **Mara and others Vs. Mst. Nikko alias Punjab Kaur and another, AIR 1964 SC 1821**, contends that both the Courts have wrongly drawn the presumption that in the absence of evidence to prove which part of the property is ancestral and which part thereof is non-ancestral, the entire property shall be presumed to be ancestral/joint Hindu family property and, therefore, wrongly decreed the suit. He submits that the opinion of both the Courts runs contrary to the judgment passed by the Supreme Court in **Mara's case (supra)**. He relies upon para 7 of the said judgment, which is extracted as under:-

“7. Now, it has been ruled in the Punjab consistently that where lands are so mixed up that the ancestral and non-ancestral, portions cannot be separated they must be regarded as non-ancestral, unless it is shown which are ancestral and which are not. This was laid down by the Privy Council in Avtar Singh v. Thakar Singh. It was held by Mr. Justice Kapur (as he then was) in Indar Singh v. Gulzara Singh and others basing himself upon Saif-ul-Rahman V. Mohammad Ali Khan and Jagtar Singh v. Raghbir Singh that land ceases to be ancestral if it comes into the hands of an owner otherwise than by descent. Once these conclusions are reached, it is quite obvious that the decision of the District Judge not to apply the answer to question No. 52 to non-ancestral land was right. It may be mentioned that the answers to questions refer to ancestral property only and this is now firmly established. In fact, it was not denied at the hearing.”

13. He has also challenged the various other findings arrived at by the Courts below.

14. On the other hand, the learned Senior counsel representing the

respondent has contended that late Sh. Ruldu Ram along with his brothers purchased 69 kanals and 7 marlas of land from the joint Hindu family funds, therefore, the aforesaid property would also be part of the joint family ancestral coparcenary property. He relies upon the judgment passed in *Appasaheb Peerappa Chandgade vs Devendra Peerappa Chandgade and other, 2007(1) SCC 521.*

15. After having heard the learned Senior counsels representing the parties, this Court is of the view that there is no dispute with regard to the fact that if the plaintiffs fail to segregate and identify the properties which are ancestral and non-ancestral, then, the entire property shall be considered to be non-ancestral. It may be noted here that this view has been consistently followed since the judgment was passed in *Avtar Singh Vs. Thakar Singh, 1910(42) PR 1910 = 1908 SCC(online) Privy Council 12.* This view was, once again, reiterated by a Division Bench of the Lahore High Court in *Labh Singh and other Vs. Smt. Jasso and another AIR 1938 Lahore 180 = 1937 SCC(online) Lahore 265.*

16. The learned Senior counsel representing the respondent has failed to draw the attention of the Court to any view to the contrary.

17. From a careful reading of the pleadings, it is evident that both the Courts have failed to cull out the proper issues which are considered necessary for proper adjudication of the case. These issues are as under:-

1. *Whether the alleged adoption of Sh. Paramjit Singh (plaintiff No.1) was with the sole objective of grabbing the property of late Sh. Ruldu Ram? OPD*
2. *Whether after the death of late Sh. Ranjit Singh plaintiff No.2 (Smt. Nasib Devi) left the matrimonial home and initially lived with Sh. Mehenga Singh resident of village Raili for a period of one year and thereafter, she been living with Sh. Dev Raj as his wife in village Gardiwala while severing all connections from the family of late Sh. Ruldu Ram? OPD*
3. *What is the effect of a previous suit filed by the*

plaintiffs which was decided vide order dated 02.04.1984? OPD

18. These issues arise in the present case because Smt. Nasib Devi has adopted Sh. Paramjit Singh after a period of more than 2 years from the date of execution of a registered Will by late Sh. Ruldu Ram in favour of Smt. Swarno Devi. In the written statement, defendant No.1 has specifically alleged that the adoption of Sh. Paramjit Singh is with the sole objective of grabbing the property of late Sh. Ruldu Ram. It has also been specifically pleaded that after the death of late Sh. Ranjit Singh in the year 1959, Smt. Nasib Devi left the matrimonial home and lived with Sh. Mehenga Singh resident of village Raili for a year and thereafter, she has been living with Sh. Dev Raj as his wife. It may be noted here that Sh. Sudesh Devi wife of Sh. Dev Raj is the sister of Smt. Nasib Devi.

19. The plaintiff No.2 while appearing in evidence admits that she had filed previous suit against late Sh. Ruldu Ram which was dismissed. PW-2 Sh. Bidhi Chand, a witness examined by the plaintiff admits that Smt. Nasib Devi resides with Sh. Dev Raj. Smt. Darshana Katoch, Smt. Swarno and Sh. Bishan Dass (attesting witness of the Will) have consistently stated that Smt. Nasib Devi did not stay with the family of late Sh. Ruldu Ram after his death and she resided in village Gardiwala with Sh. Dev Raj as his wife. It has also come in evidence that Smt. Nasib Devi never had good relations with late Sh. Ruldu Ram.

20. It has also been found by both the Courts below that apart from inheriting some property from his father, late Sh. Ruldu Ram inherited certain property from his uncle Sh. Sohnu. It has also come in evidence that late Sh. Ruldu Ram along with his brother purchased various properties including land measuring 69 kanals and 7 marlas as well as land measuring

19 marlas. In these circumstances, it has become necessary for the Court to remit the matter back to the trial Court. Further, the copy of the Will dated 24.03.1981 is not a part of the reconstructed record, the recitals whereof are relevant in view of Section 32 of the Indian Evidence Act, 1872. Moreover, Ex.D-1, the order passed in the previous suit on 02.04.1984, is also not a part of the record.

21. Keeping in view the aforesaid facts, it is considered appropriate to remit the matter back to the trial Court. It may be noted here that in the absence of any material challenge, the findings of fact arrived at by the Courts below on the question of genuineness and validity of the registered Will in favour of Smt. Swarno Devi are upheld. The issue of correctness of the Will in favour of Smt. Swarno Devi shall not re-opened.

22. The parties shall be permitted to lead further evidence on the existing issues as well as the additional issues framed and thereafter, the Court shall proceed to re-decide the suit.

23. The parties through their counsels are directed to appear before the trial Court on 22.07.2022.

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

04th July, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*