

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

RSA-2618-2008 (O&M)

Date of decision: 28.02.2022

Kuldeep Singh (now deceased) through
his legal representatives and othersAppellants

versus

Jagdip Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ashish Aggarwal, Senior Advocate with
Ms. Ashna Aggarwal, Advocate
for the appellants.

Mr. Amit Jhanji, Senior Advocate with
Ms. Eliza Gupta, Advocate,
Mr. Vikram Brar, Advocate,
Ms. Zaheen Kaur, Advocate
for respondent No.1.

FATEH DEEP SINGH, J.

Jagdip Singh-plaintiff, now respondent, filed against
Wazir Singh and others, a civil suit for declaration and possession
of immovable properties duly detailed and described in the plaint,
claiming the property to be a Joint Hindu Family property being
managed by defendant No.1 Wazir Singh being the *Karta* and
terming it to be a coparcenary and ancestral one claimed that

out of this land measuring 120 Kanal 06 Marlas, he was entitled to his legitimate share as per the law. The plaintiff further claimed that a judgment/decreed dated 04.05.1982 in a Civil Suit bearing No. 43/1982 titled as Kuldeep Singh versus Wazir Singh, the defendants have managed to procure a collusive decree at his back and even sought its setting aside.

The claim of the defendants is of total denial terming that the plaintiff had no right title of concern with the suit property which did not fall under the Ancestral Joint Coparcenary property in which the plaintiff did not have any right title of interest and even went to the extent of denying that the plaintiff-Jagdip Singh was son of defendant No.1-Wazir Singh and is rather son of one, Bharpur Singh s/o Sham Singh. It is termed that the decree was legal and binding upon the parties and after such an inordinate delay, the challenge to the same was barred by principle of limitation. The Trial Court framed the following issues:-

1. Whether the plaintiff is entitled for declaration as prayed for? OPP
2. Whether the decree passed on 04.05.1982 in civil suit No.43 of 1982 titled as Kuldeep Singh Vs. Wazir Singh is not binding upon the rights of the plaintiff and is null and void? OPP
3. Whether the plaintiff has concealed the material facts from the Court? OPD.
4. Whether the plaintiff has no locus-standi to file the present suit? OPD.
5. Whether the suit is time barred? OPD.
6. Relief.

The plaintiff examined himself as PW-1 and sought corroboration through his claim through PW-2-Varinder Pal Kaur, PW-3-Gurdas Kaur and after tendering documents closed his evidence.

The defendant examined DW-1-Kamal Kishore, Inspector, FCI, defendant-Wazir Singh testified as DW-2 and defendant-Kuldeep Singh deposed as DW-3 and after tendering documents closed the evidence.

The Court of the learned Additional Civil Judge (Senior Division), Muktsar, vide judgment/decree dated 05.11.2005 decreed the suit with costs.

Thereafter, upon appeal, the Court of the learned Additional District Judge (Ad-hoc), Fast Track Court, Muktsar, through impugned findings dated 31.05.2008, dismissed the appeal with no order as to costs. It is in this very background, the present regular second appeal by unsuccessful Kuldeep Singh has come about. It is worthwhile to refer here that during the course of proceedings, Kuldeep Singh had died and his LRs were brought on the record and that is how the amended memorandum of parties has come about.

Heard learned counsel of both the sides and perused the records.

In view of the recent pronouncement in 'Kirodi (since deceased) through his LR vs. Ram Parkash and others' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Since, the suit has been filed by the plaintiff-Jagdip Singh and, therefore, a heavy onus lay upon him to establish his case to the hilt and cannot be allowed to take undue benefit of the weakness of the case of the opposite side. The primary issues are issue No.1 as to the entitlement of the plaintiff to share in this suit property and second the setting aside of so called collusive decree dated 04.05.1982 passed in a civil suit No.43 of 1982 titled as 'Kuldeep Singh versus Wazir Singh'. The so called collusive decree being passed on 04.05.1982 and the present suit challenging the same has been filed on 13.06.1995 after more than 13 years. The schedule attached with the Limitation Act, 1963 provides the period of limitation for institution of suits and the time, from which it begins to run Article 58 therein ensures that any suit for declaration has to be instituted within a period of 03 years with the cause of action or right to sue first accrued. Since the pleadings

are the very foundation of a case of a party and there is nothing substantial pleaded much less proved by the plaintiff upon whom, the onus to prove this issue No.2. It is laid down by this Court in 'Dilbagh Singh versus Umed Singh and others' 2013(3) PLR 190 that the same can be challenged only within a period of 03 years on the date of decree as there being pre-existing rights in the said suit. Though, on behalf of the respondents, much arguments have sought to come about ensures that a suit to ensure a right to share from a Joint Family property is 12 years when the exclusion becomes known to the plaintiff and even by that analogy, the plaintiff has miserably failed to plead and prove his case and the suit has come about after 13 years and there is nothing to seek condonation of such a delay. The appellant has sought to place reliance on the judgments titled as 'Harpal and others versus Ram Piari and others' 1981 PLJ 492; 'Tej Singh and others versus Jagrup Singh and others' 1989 PLJ 38; 'Gurdev Kaur and another versus Mehar Singh and others' 1989 PLJ 182 and 'Ranganayakamma and another versus K.S. Prakash (D) by LRs and others' 2008(3) R.C.R. (Civil) 601 and to counter the same, reliance by respondent No.1 has been placed on the judgments titled as 'Pritam Singh versus The Assistant Controller

of Estate Duty, Patiala' 1976 PLR 342; '*Hardip Singh versus Sukhdev Singh and others*' 2010(3) R.C.R. (Civil) 644; '*Shyam Lal versus Sanjeev Kumar and others*' 2010(8) R.C.R. (Civil) 2798; '*Rohit Chauhan versus Surinder Singh and others*' 2013(9) SCC 419; '*Shyam Narayan Prasad versus Krishna Prasad and others*' 2018(7) SCC 646; '*Labh Singh versus Sukhdev Singh and others*' RSA No.2046 of 1988; '*Smt. Jasodha Mohanty versus Harish Chander Mohanty*' First Appeal No.28 of 1986; '*Krishan Kumar Sharma versus Ashok Kumar Sharma*' RSA No.516 of 1996; '*Bhoop Singh versus Ram Singh Major and others*' 1995 (5) SCC 709; '*Ravinder Kaur Grewal versus Manjit Kaur*' 2020(9) SCC 706; '*Korukonda Chalapathi Rao and another versus Korukonda Annapurna Sampath Kumar*' 2021 SCC Online SC 847; '*Randhir Kaur versus Prithvi Pal Singh and others*' CA No.5822 of 2019; '*Dhanpat versus Sheo Ram and others*' Civil Appeal No.1960 of 2020 and '*Mahavir Singh and others versus Naresh Chandra and another*' 2001 (1) SCC 309.

Since, the parties, admittedly, are Hindus as per the Hindu Succession Act and, therefore, are governed by the Act and not by the customs over matters pertaining to succession and the customary law that stands abrogated. Looking into the stands of the two sides, plaintiff claims to have been born in the year

1956 and the family partition is claimed to have come about in the year 1961 and, therefore, by that analogy, at the time of filing of the suit, right over the property, in question, being a coparcenary Joint undivided Family property does not survives by any means. Wazir Singh has claimed that the property is self-acquired and the only semblance of evidence that has come about is *jamabandi* Ex.P1 pertaining to the year 1993-94 and this only establishes that Wazir Singh inherited this property from his father, Bachan Singh @ Bhag Singh who has died in the year 1961 and that by this, it establishes that the property is the self-acquired property of Wazir Singh. To bring the property within the domain of coparcenary ancestral property, the very elements of unbroken chain of succession of three generations is by no means established. More so, as is there on the records, alleged divorce of Wazir Singh and Gurdas Kaur had come about in the year 1970 and it is there in the records and the own submissions of the plaintiff in his statement that thereafter, he had started residing with his mother-Gurdas Kaur after she entered into a wedlock with Bharpur Singh and, therefore, casts a doubt over the veracity of the claim of the plaintiff. More so, the averment that has come about in the impugned findings by the learned First Appellate Court that decree was passed on 04.05.1982 which was never acted upon till

its mutation was sanctioned on 12.05.1993 is factually incorrect, when the record establishes that the mutation actually was entered into on 12.05.1983. Mutation being a notice to public at large even by that analogy, the suit of the plaintiff falls beyond the prescribed period of limitation.

The defendant-Wazir Singh has denied that the plaintiff was born out of his loins and, therefore, a heavy onus lay upon the plaintiff to establish it so. What has come about is that none of the birth certificates are proved on the records as per law. The only semblance of evidence the educational certificates simplicitor depicts Jagdip Singh is son of Wazir Singh but it is nowhere brought by any pedigree table to be so. What further adds to the woes of the plaintiff is a categorical finding by the First Appellate Court after perusal of documents Ex.P-1, Ex.P-20, Ex.P-21 and Ex.-P-22 which shows that Wazir Singh s/o Bachan Singh @ Bhag Singh who is son of Anup Singh @ Anokha and it is rightly held by the First Appellate Court that there is document on the record to show that the property in dispute, was held by Anup Singh @ Anokha and has rightly returned the findings that it cannot be held to be a coparcenary property of Wazir Singh and which findings of fact has not been challenged till date and is fairly conceded by counsel for the two sides. More so, in the absence of

any consolidation documents after it had come about in the year 1960-61, there is change of khasra numbers and properties cannot be co-related between the earlier revenue records and the subsequent revenue records to this period. What further adds to this conglomerate of claim and counter-claim is the death of Wazir Singh during the pendency of the suit and there is a categorical stand by the appellant-Jagdeep Singh that Wazir Singh had executed a registered Will dated 25.03.1991 in his favour making entire bequeath of the property in his favour and which is another distressing feature for the opposite side. How the learned First Appellate Court is trying to express its opinion on the Will dated 25.03.1991 without there being specific issues to that effect certainly needs to be deprecated as it was not subject matter of challenge or subject to adjudication by the Court of law. Even since the mutation so sanctioned has not been put to question in the issues so framed between the parties and nothing substantial has come up in the evidence to adjudicate on this aspect of the matter.

How the decree which is of the year 1982 was collusive, has not been established by any substantial evidence when admittedly the file of the case stood destroyed in the fire that engulfed the record room and in the absence of any pleadings, evidence or any such thing to that effect, it is too preposterous for the Courts to express their opinion thereon. The conclusions

drawn in the impugned findings in para Nos.32, 33 and 34 are unsubstantiated by any means and rather, to the mind of this Court, are based on own assumptions and presumptions by the Court, when it is well settled proposition of law that there is no presumption in law that a property is joint property only by virtue of the family being joint, the onus is always upon a party who asserts it. It has been the finding returned by the First Appellate Court that Wazir Singh was absolute owner of the property inherited by him from his father upon his death in the year 1961 and by that very analogy alone, being the absolute owner of the property, Wazir Singh had the power, authority and right to dispose off his property as per his wishes and how the two Courts below are trying to contradict itself by first holding that the property was joint coparcenary property and that the judgment/decreed of the year 1982 is collusive. Wazir Singh being the absolute owner of the property, an inherent legal right vested in him to dispose off his property as per his whims and fancies and the plaintiff did not have any vested right to lay challenge to such a disposition by Wazir Singh. In light of this, how can the impugned findings hold that Jagdip Singh-plaintiff was a necessary party in the previous suit of the year 1982? In light of this background, merely because Gurdas Kaur happens to be ex-wife

of Wazir Singh, does not *ipso facto* raises a presumption that Jagdip Singh is the son of Wazir Singh when immediately, thereafter, Gurdas Kaur has entered into a wedlock with Bharpur Singh and it is there in the evidence for which findings have been returned in para No.32 that Gurdas Kaur started living with Bharpur Singh in Chandigarh along with her two children including Jagdip Singh. Mere name of Wazir Singh having cropped up in the documents by way of arms license (Ex.P3), driving license (Ex.P4), CBSE certificate (Ex.P8), Detail Mark Sheet (Ex.P9), University certificates (Ex.P10 to Ex.P-13), voter list (Ex.P14), marriage registration certificate of Wazir Singh (Ex.P16) cannot by any means even loosely construed to be pieces of evidence to establish that relationship between Wazir Singh and the plaintiff. Without proving a letter purported to have been written by defendant No.1-Wazir Singh to his daughter-Lily could be accepted so is against canons of law of evidence and is well settled position of law that mere exhibiting of documents does not dispenses with its proof and has to be proved in accordance with law. In light of this position, as has been detailed and discussed above, since the plaintiff was residing separately since decades at Chandigarh and there being no semblance of evidence, the alleged family of Wazir Singh, being joint they can be termed to be joint Hindu undivided coparcenary family and what right

accrues to plaintiff out of such a loose relationship is anybody's guess. Furthermore, in para No.52, the learned First Appellate Court has embarked upon an adventure into a finding that plaintiff in earlier suit of the year 1982 was not having antecedent title and how such a decree was binding without being registered under the Indian Registration Act is miserably off the tangent and rather reflects how the learned Court below in the impugned findings is trying to reach a target without there being way to it carved out earlier in the pleadings of the issues. Thus, from all what has been discussed and detailed above, being a consent decree of the year 1982, can only be challenged on the grounds of fraud and not on merits. Reliance placed on the judgment titled as 'Ranganayakamma and another versus K.S. Prakash (D) by LRs and others' 2008(3) R.C.R. (Civil) 601 and further, Court cannot go behind a consent decree whether it is wrongly or rightly passed as is the Division Bench view of this Court in judgment 'Tej Singh and others versus Jagrup Singh and others' 1989 PLJ 38.

In light of what has been discussed above, the two Courts below has erred in deciding issues in favour of the plaintiff and which is wholly wrong interpretation of the evidence and contrary of the settled proposition of law and which findings on the issues are hereby reversed and setting aside the impugned judgment decree

and thereby, allowing the present appeal of the appellant throughout.

The present appeal stands allowed accordingly.

28.02.2022
Neha

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No