

**RSA No.1038 of 2012(O&M)
and other connected case**

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

**RSA No.1038 of 2012(O&M)
Date of decision:31.03.2022**

Madan Gopal

...Appellant

Versus

Jai Kumar and others

...Respondents

RSA No.749 of 2012 (O&M)

Ravi Nandan

...Appellant

Versus

Jai Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Malkeet Singh, Advocate
for the appellant(in RSA No.1038-2012).

Mr. Sanjay Vashisth, Advocate,
for the appellant (in RSA No.749 of 2012)
for respondent no.10(in RSA No.1038-2012).

Mr. Sanjiv Gupta, Advocate
for respondent no.1 to 6 (in RSA No.1038-2012).

Mr. V.K.Jindal, Sr. Advocate, with
Mr.Akshay Jindal, Advocate,
Mr. Gopal Soni, Advocate and
for respondent no.1, 4 and 6.

Mr. Parvinder Singh, Advocate
for respondent no.7 to 9 (in both the appeals)

ANIL KSHETARPAL, J (Oral)

By this judgment, two connected Regular Second Appeals
No.749 and 1038 of 2012, arising out from a common suit filed by Madan
Gopal son of Megh Raj, shall stand decided.

Regular Second Appeal No.749 of 2012, has been filed by

defendant no.4, whereas Regular Second Appeal No.1038 of 2012, has been filed by the plaintiff-Madan Gopal.

Some facts are required to be noticed.

The plaintiff-Madan Gopal is son of Late Sh. Megh Raj, who had three sons-Madan Gopal, Banarsi Dass and Ravinandan. Jai Kumar is son of Banarsi Dass. In other words, Jai Kumar is the grand son of late Sh. Megh Raj.

Madan Gopal filed a suit for grant of decree of declaration that the land measuring 124 kanals and 1 marla is Joint Hindu Family Ancestral Coparcenary property and the plaintiff and defendant no.1 to 4 constitute a Joint Hindu Family. It was asserted that the property in dispute has been inherited by Megh Raj from his father Munshi Ram, who inherited the property from his father Ram Ji Dass. The plaintiff sought declaration that a consent decree suffered by Megh Raj in favour of Jai Kumar on 05.03.1990, with respect to land measuring 41 kanals 14 marlas was illegal. The correctness of various sale deeds and mortgage deeds was also questioned.

Defendant no.1 to 3, while filing the separate written statement pleaded that defendant no.1 has not inherited the property in dispute from his father Munshi Ram and major portion of the suit land has been inherited by Megh Raj, who was defendant no.1, from late Smt. Parbhi widow of Sh. Telu Ram. Furthermore, it was asserted that defendant no.1, has correctly, pursuant to their family settlement, acknowledged defendant no.3 to be an owner in possession of the land measuring 41 kanals 14 marlas. In order to prove the intention of late Sh. Megh Raj, a Will dated 17.12.1992, was also produced.

Defendant no.5 to 8, being purchasers have pleaded that they are the bonafide purchasers and all the brothers are living separately for the last 15 years.

The learned trial Court partly decreed the suit, whereas the First Appellate Court has reversed the judgment and decree passed by the trial Court.

It is established on the file that as per jamabandi for the year 1941-42 Sh. Munshi Ram, the father of Megh Raj was owner of land measuring 128 bighas and 12 biswas. The aforesaid land was inherited by Megh Raj and his brother Bachna Ram and Chanan Ram. Late Smt. Parbhi widow of Sh. Telu Ram, who was aunt of Megh Raj was also owner of 119 bighas and 8 biswas. There is no dispute that the land owned by Smt. Parbhi also was inherited by Megh Raj and his brothers. Megh Raj also purchased 10 bighas of land from Smt. Parbhi vide sale deed dated 01.12.1942. It is also evident that in the consolidation of holdings, the entire land was a subject matter of consolidation.

No evidence has been produced to prove as to which part of the property was inherited by Megh Raj from his father Munshi Ram. It has also come in evidence that Megh Raj during his life time gave 3 killas land to each of his son, namely, Ravinandan and Madan Gopal. It has also come in evidence that Ravinandan and Madan Gopal were in the Police service and they resided separately. It is also not the case of the plaintiff that Megh Raj had put the entire property in common hotchpot/common stock.

In such circumstances, the plaintiff failed to identify which part of the property was ancestral or Joint Hindu Family property. It has also

come in evidence that Madan Gopal and Ravinandan have constructed separate kothis.

Keeping in view the aforesaid facts, the appellants in separate appeals have failed to make out a case for interference in exercise of powers under Section 41 of the Punjab Courts Act, 1918.

Dismissed.

March 31, 2022

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**(ANIL KSHETARPAL)
JUDGE**