

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

Sr. No.215

**RSA No.1025 of 2013 (O&M)
Date of Decision: 07.11.2022**

Surinder Singh

.... Appellant

Versus

Massa Singh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Sandeep Bansal, Advocate and
Mr. Anubhav Bansal, Advocate
for the appellant.

Mr. Satbir Rathore, Advocate
for the respondents.

TRIBHUVAN DAHIYA, J.

This is plaintiff's second appeal against the concurrent findings of both the Courts below.

2. The appellant/plaintiff (hereinafter referred to as 'plaintiff') filed a suit for declaration claiming that he and respondent/defendants No.1 to 3 (hereinafter referred to as 'defendants') are coparceners, owners in possession of the suit property, i.e., land measuring 11 *kanal* 19 *marlas* situated in Village Choka, Hadbast 123, Tehsil Dasuya, District Hoshiarpur as per *jamabandi* for the year 2000-2001. It is the Joint Hindu Family coparcenary property of the plaintiff and defendant. The sale deed dated 07.05.2003, executed by defendant No.1 in favour of defendants No.2 and 3, was without legal necessity or any benefit to the coparcenary estate; it was without the consent of the plaintiff also. Therefore, the same was null and void, and not binding on the plaintiff's rights in the property in dispute. The

relief of permanent injunction restraining the defendants from changing the nature of the suit land was also sought.

3. Defendants contested the suit *inter alia* stating that plaintiff was residing abroad and wanted to grab the property of defendants No.2 and 3 by monetary influence. Relationship between the parties was admitted. It was also submitted that Ram Singh/defendant No.1 during his lifetime expelled the plaintiff from his property in the year 1984, on account of ill treatment by the latter. A notice was also got published by him to that effect in the newspaper, therefore, the question of the suit property being Joint Hindu Family coparcenary property does not arise.

4. On pleadings of the parties, following issues were settled:

1. Whether the property in dispute is Joint Hindu Family ancestral coparcenary property of the plaintiff and defendants No.1 to 3 as prayed for?
OPP
2. Whether the plaintiff and defendants nos.1 to 3 have community of interest and unity of possession by birth in the family as prayed for?
OPP
3. Whether the plaintiff and defendants nos.1 to 3 are coparcener owner in joint possession of the property in dispute? OPP
4. Whether the plaintiff is entitled to the declaration as prayed for?OPP
5. Whether the sale deed dated 07.05.2003 executed by defendant no.1 in favour of defendants no.2 and 3 without legal necessity and without any benefit of coparcenary estate of the plaintiff and defendants no.1 to 3 and the same is without the consent of the plaintiff and is null and void ab initio and is illegal and is not binding upon the rights of the plaintiffs? OPP

6. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
7. Whether the suit of the plaintiff is not maintainable in the present form? OPD
8. Whether the plaintiff is stopped by his own act and conduct from filing the present suit? OPD
9. Whether the defendants are entitled for special costs under section 35-A of CPC? OPD
10. Relief.

5. Issues No.1 to 5 were decided together by the trial Court by judgment and decree dated 05.02.2008 holding that the plaintiff had failed to prove that suit property was ancestral, and that he had interest in the same. Defendants were held to be owners in possession of the suit property, the sale deed dated 07.05.2003 was held to be valid and legal. In view of the findings on Issues No.1 to 5, the remaining Issues No.6 and 7 were also decided against the plaintiff. On Issues No.8 and 9 no evidence was led by the defendants, and the same were accordingly decided against them. In appeal, findings of the trial Court were affirmed by the Lower Appellate Court by judgment and decree dated 07.09.2012.

6. Learned counsel for the plaintiff has raised two-fold arguments to assail the judgments of the Courts below. It has firstly been contended that suit property was ancestral in nature and both the Courts below have wrongly held it otherwise. Secondly, it has been contended that the Courts below have wrongly held that PW-4 Bhulla Singh, power of attorney holder of the plaintiff, has failed to prove the fact of his being attorney of the plaintiff in the instant suit, and on that account adverse inference has been wrongly drawn against the latter. *Per contra* learned counsel for the defendants has supported the findings of the Courts below.

7. Learned counsel for the parties have been heard and record perused.

8. So far as ancestral nature of the suit property is concerned, both the Courts below concurrently held that there is no evidence on record to establish the fact. Plaintiff has only produced *jamabandi* for the years 1965-66 and 1970-71 to establish nature of the property. In both the *jamabandis*, defendant No.1-Ram Singh is shown to be owner of the suit property and nothing beyond. There is no evidence on record to establish that suit property has devolved upon Ram Singh from last four generations. Learned counsel for the plaintiff, by referring to *kursinama*/pedigree table has argued that nature of the property being ancestral can be found from this document. However, pedigree table in itself is no evidence of ancestry, nor can it be the basis to decide ancestral nature of property which can only be established by independent proof including the revenue records/*jamabandis*. It has to be proved beyond doubt that the property was undivided property of a Hindu family of four generations. There is no such evidence on record. Therefore, there is no ground to interfere with the concurrent findings of the Courts below on this issue.

9. Secondly, the plaintiff himself has not appeared in the witness box to testify in support of the plaint. His power of attorney holder, PW-4 Bhulla Singh, has even failed to produce the original power of attorney on record; only a copy of the same has been produced as Ex.P1. It is also not disputed that the witness was afforded opportunities to produce original power of attorney on record and his cross-examination was deferred for the purpose. Still, he could not bring the original on record. It was, therefore, held that photocopy of the power of attorney cannot be read in evidence. As

the plaintiff himself has not deposed in the case, therefore, no exception can be taken to the adverse inference drawn against him on this account.

10. It has been held by the Supreme Court of India in *Vidhyadhar v. Mankikrao and another*, 1999 AIR SC 1441, in case a party to a suit does not enter into the witness box, an adverse influence has to be drawn against him/her. Therefore, the findings are in line with the settled legal proposition on the issue. Relevant paragraph 17 of the judgment in that regard read as under:

17. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in *Sardar Gurbaksha Singh v. Gurdial Singh*, AIR 1927 Privy Council 230. This was followed by the Lahore High Court in *Kirpa Singh v. Ajaipal Singh*, AIR 1930 Lahore 1 and the Bombay High Court in *Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh*, AIR 1931 Bombay 97. The Madhya Pradesh High Court in *Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat*, AIR 1970 Madhya Pradesh 225, also followed the Privy Council decision in *Sardar Gurbakhsh Singh's case* (supra). The Allahabad High Court in *Arjun Singh v. Virender Nath*, AIR 1971 Allahabad 29 held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab and Haryana High Court in *Bhagwan Dass v. Bhishan Chand*, AIR 1974 Punjab and Haryana 7, drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box.

11. In view of the aforesaid, there is no error of law in the judgments of the Courts below. No substantial question arises for consideration either.
12. Appeal stands dismissed.
13. Pending application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

07.11.2022
Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes