

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.5512 of 2015 (O&M)

Date of decision: 25.08.2022

Mahender Singh

..Appellant

Versus

Rohtash and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S.Mamli, Advocate
for the appellant .

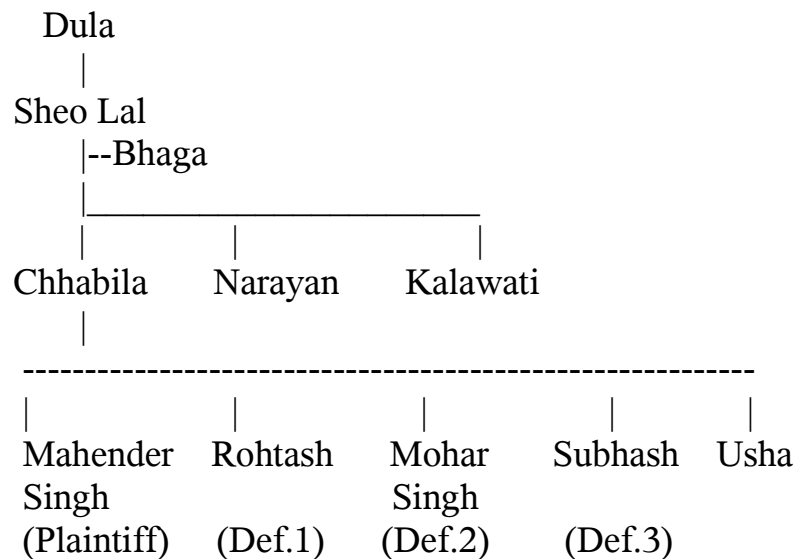
Mr. M.L.Sihag, Advocate
for respondent no.1 to 4.

ANIL KSHETARPAL, J(Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

2. While assailing the findings of fact arrived at by the First Appellate Court, the plaintiff has filed the present appeal.

3. The plaintiff filed a suit for grant of decree of declaration that the release deeds executed by his father in favour of defendant no.1 to 3 are not binding upon him. In order to understand the inter-se relationship between the parties, a small pedigree table is being drawn:-



4. The plaintiff claims that he has right in the property by birth and Sh. Chhabila, his father, has no right to transfer the property in favour of his other sons.

5. The defendants while contesting the suit claimed that Sh. Sheo Lal was exclusive owner of the property located in villages Ladvi and Mallapur. It has also come in evidence that Sh. Sheo Lal purchased the entire land located in village Mallapur. He also received some land from his brother Kirta. On the death of late Sh. Sheo Lal, the property was divided amongst Class-I heirs as per Section 8 of the Hindu Succession Act, 1956. Thus, Smt. Bhaga (widow), Sh. Chhabila, Sh. Narayan Singh and Smt. Kalawati became owner of 1/4th share each. It has come in evidence that Smt. Kalawati transferred her share equally in favour of Sh. Narayan Singh (her brother) as well as Sh. Mahender Singh (her nephew), the plaintiff. Thus, Sh. Mahender Singh became owner of 19 kanals of land vide release deeds dated 25.02.2012, 25.05.2012 and 16.06.2012. Sh. Chhabila, after noticing that Sh. Mahender Singh has already been given more land than his entitlement, divided the property amongst his three other sons, namely, Sh. Rohtash, Sh. Mohar Singh and Sh. Subhash by executing two release deeds on 19.07.2012.

6. The plaintiff filed the present suit which was decreed by the trial court assuming that the property is ancestral in nature. However, the First Appellate Court, on reappreciation of evidence, found that there is no evidence to prove that the property was either ancestral or coparcenary in nature. It is evident that Sh. Mahender Singh has already become owner of 19 kanals of land.

7. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book and the record of the courts below which was requisitioned.

8. The learned counsel representing the appellant contends that the property was purchased by late Sh. Sheo Lal from joint family funds. He further submits that Smt. Kalawati transferred the property in his favour on account of deep love and affection. He further submits that since the property was at one point of time, owned by his grand father, therefore, the property is ancestral in nature. He further contends that the plaintiff has been left out by his father. purposively.

9. On the other hand, the learned counsel representing the defendants contends that the plaintiff miserably failed to prove his case. He further submits that the plaintiff never included the property which was received by him from Smt. Kalawati. It is further contended that the plaintiff has not even pleaded that late Sh. Sheo Lal purchased the property from Joint Hindu Family funds.

10. From the facts narrated above, it is evident that the plaintiff has become owner of 19 kanals of land, whereas, his three brothers have got 12 kanals and 14 marlas each. Obviously, the father had has ensured that his remaining children get some share in the property. Secondly, there is no

evidence that Smt. Kalawati had any deep love and affection towards the plaintiff. Moreover, there is neither any evidence nor pleadings to the effect that the property was purchased by late Sh. Sheo Lal from Joint Hindu Family funds.

11. Additionally, it is evident that at the time of death of Sh. Sheo Lal, the entire property came to be inherited by Smt. Bhaga, Sh. Chhabila, Sh. Narayan Singh and Smt. Kalawati. Had it been coparcenary property, the property would not have been devolved by way of succession in accordance with Section 8 and Schedule I of the Hindu Succession Act, 1956.

12. From the facts narrated above, it is evident that each successor of late Sh. Sheo Lal was dealing with the property as his individual property. Further, there is no evidence to prove that even after the execution of the various release/transfer deeds, the property continued to be joint. All the release/transfer deeds have been executed in the year 2012 only. The last argument of the learned counsel representing the appellant that he has been left out by his father, malafidely, is not substantiated, rather the plaintiff has received the maximum share amongst his brother.

13. Hence, no ground to interfere is made out.

14. Dismissed.

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

August 25, 2022

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(ANIL KSHETARPAL)
JUDGE

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