

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

RSA-2101-1990(O&M)

Date of decision:-1.2.2023

Amar Singh through LRs and others

...Appellants

Versus

Gian Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Gulzar Mohammad, Advocate
for the appellants.

Ms.Harveen Kaur, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Gian Singh son of Sh.Sahib Ditta alias Nikka Singh, resident of village Ladpur, Sub Tehsil Amloh, District Patiala had brought a suit against his brothers Amar Singh, Babu Singh, Surjit Singh and married sisters Smt.Amro, Smt.Tejo and Smt.Ramo, all defendants seeking joint possession of the land to the extent of 1/4 share or in the alternative to the extent of 8/35 share in the land measuring 27 kanals 19 marlas, detailed in the head-note of the plaint and situated at village Ladpur, Sub Tehsil Amloh.

2. As per the case of the plaintiff, the suit land happened to

be joint Hindu family ancestral coparcenary property, of which Sh.Sahib Ditta alias Nikka Singh, father of the parties was Karta; the plaintiff along with his brothers defendants No.1 to 3 had acquired right in the suit property by birth becoming coparceners along with their father to the extent of 1/5 share each; Sh.Sahib Ditta alias Nikka Singh, father of the parties had died on 5.12.1981 at Ladpur and after his death, the plaintiff and his brothers defendants No.1 to 3 became owners to the extent of 1/5 share along with equal share left by their father Sh.Sahib Ditta alias Nikka Singh by natural succession; Smt.Ind Kaur mother of the parties had died during the life time of their father Sh.Sahib Ditta alias Nikka Singh; the plaintiff challenged the mutation got effected by the defendants in their names excluding the name of the plaintiff. Feeling aggrieved by non-inclusion of his name in the revenue record qua the suit land as a co-owner, the plaintiff had brought the suit in question.

3. Notice of the suit was given to the defendants. The defendants No.1 to 3 had put in appearance and offered a contest, whereas remaining defendants did not appear despite service, as such they were proceeded against ex-parte.

4. In the written statement filed on behalf of defendants No.3 they admitted the plaintiff to be their brother but denied that the suit property has nature of joint Hindu Family property. It was further denied that the plaintiff is a coparcener and he acquired right

in the suit land on account of his birth in the family. According to the contesting defendants, Sh.Sahib Ditta alias Nikka Singh father of the parties had executed a Will dated 18.11.1981 in favour of the defendants No.1 to 3; the plaintiff was not having good terms with his father and had initiated security proceedings a number of times; the plaintiff kept wandering from one place to another ever since he attained majority and he is not having any permanent abode. According to the contesting defendants, the plaintiff did not live in village Ladpur much less with his father; there was no occasion of the plaintiff forming a joint family with his father and brothers. The contesting defendants claimed that they used to serve their father and helped him in performing marriages of the sisters, therefore in lieu of the services rendered by them Sh.Sahib Ditta alias Nikka Singh had executed a Will in their favour.

Refuting the remaining allegations, the contesting defendants prayed for dismissal of the suit.

5. The plaintiff had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint. He labelled the Will set up by the defendants No.1 to 3 as a forged and fabricated document ineffective qua his rights.

6. On the pleadings of the parties, following issues were framed:

1. Whether the property in suit is Joint Hindu Family and coparcenary property of the parties?

2. Whether Sahib Ditta alias Nikka Singh executed a valid will dated 18.11.81?

3. Relief.

7. Both the parties were afforded adequate opportunities to lead their evidence in support of their respective claims.

8. After hearing the learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff holding that the plaintiff did not constitute a joint family with his father Sh.Sahib Ditta alias Nikka Singh and the defendants and that the nature of the property is ancestral coparcenary property. Issue No.2 was decided holding that Will Ex.D1 set up by defendants No.1 to 3 is a genuine document and its execution has been successfully proved by such defendants.

As a result of findings on the issues, the suit of the plaintiff was dismissed with costs vide judgment and decree dated 8.1.1988.

9. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Patiala, which was assigned to Additional District Judge, Patiala, who vide judgment and decree dated 1.9.1990 accepted the appeal, set aside the judgment and decree passed by the trial Court holding that the

plaintiff along with his father Sh.Sahib Ditta alias Nikka Singh and three others defendants No.1 to 3 are presumed to constitute a joint Hindu family and father Sh.Sahib Ditta alias Nikka Singh as one of the coparcener could deal with his own share in the property. The execution of the Will Ex.D1 set up by defendants No.1 to 3 was found to be duly proved observing that the testator had given reasons for disinheriting the appellant/plaintiff and his daughters defendants No.4 to 6 from his estate and appellant could not bring any evidence to show that Will Ex.D1 is a result of fraud or misrepresentation or was a forged document. DW1 Sukhdip Singh, DW2 Kaka Singh, the attesting witnesses of the Will along with Anokh Singh DW4 had fully proved that Sh.Sahib Ditta alias Nikka Singh was in sound disposing mind when he executed the Will resultantly 1/5 share of Sh.Sahib Ditta alias Nikka Singh in the suit property, which was held to be joint Hindu coparcenary property would be inherited by defendants No.1 to 3 and appellant/plaintiff would be left with his 1/5 share alone on the basis of which he is entitled to be in joint possession of the suit property. Accordingly, the suit of the plaintiff was decreed for joint possession to the extent of 1/5 share alone in the suit land measuring 27 kanals 19 marlas situated at village Ladpur, Tehsil Amloh.

10. Being dissatisfied with the judgment and decree passed by Additional District Judge, Patiala, the defendants No.1 to 3 have

filed the present regular second appeal before this Court, notice of which was given to respondent/plaintiff, who had put in appearance through counsel.

11. I have heard learned counsel for the parties besides going through the record.

12. In this case the relationship inter se the parties and with Sh.Sahib Ditta alias Nikka Singh is not disputed. The moot question whether plaintiff was member of the joint Hindu family along with his father Sh.Sahib Ditta alias Nikka Singh and brothers defendants No.1 to 3 and as to whether the suit land had nature of joint Hindu family ancestral coparcenary property have been dealt in a very proper and appropriate manner by the First Appellate Court of Additional District Judge, Patiala. The trial Court of Sub-Judge First Class had though arrived at the conclusion that the suit land had nature of joint Hindu family ancestral coparcenary property considering testimony of PW1 Gurbax Singh, Excerpt Kanungo and documents Ex.P1 to Ex.P10, in that way, the plaintiff had acquired interest in that land by birth. It was held that the plaintiff was not member of the joint Hindu family since he was not residing with his father which finding was obviously wrong and rightly set aside by learned Additional District Judge, Patiala. Merely because the plaintiff did not reside with his father and brothers etc. for some time does not go to show that he ceased to be member of joint Hindu

family. The security proceeding between the plaintiff and his father and even relations between them being strained does not result in taking away the status of coparcener from the plaintiff and resultantly his having interest in the suit land which he acquired by reason of his birth in the family. The plaintiff had successfully proved the nature of the suit land to be ancestral coparcenary property in which he had equal share along with his three other brothers and father i.e. 1/5 share each.

13. The next question was with regard to Will executed by Sh.Sahib Ditta alias Nikka Singh. The execution of Will was successfully proved by defendants No.1 to 3 by examining attesting witnesses DW1 Sukhdip Singh, DW2 Kaka Singh as well as DW4 Anokh Singh. From their depositions, it comes out that testator Sh.Sahib Ditta alias Nikka Singh was in sound disposing mind when he had executed Will Ex.D1 and it had been read over to him by Jora Singh, who after admitting the Will to be correct and Sh.Sahib Ditta alias Nikka Singh had put his thumb impressions on the Will in presence of attesting witnesses, who had attested the Will in presence of Sh.Sahib Ditta alias Nikka Singh. Sh.Zora Singh is stated to have since expired. No suspicious circumstance in the Will was found to be there, as such it was held to be genuine document. I do not see any reason to discard the Will. However, Sh.Sahib Ditta alias Nikka Singh could have executed the Will qua his share only and on

account of this Will, he had bequeathed his 1/5 share in the suit land to his other three sons i.e. defendants No.1 to 3 excluding the plaintiff and defendants No.4 to 6 his daughters. The trial Court clearly fell in error in dismissing the suit of the plaintiff, which error was rectified by the First Appellate Court of Additional District Judge, Patiala by accepting the appeal and decreeing the suit of the plaintiff for joint possession to the extent of 1/5 share in the suit land.

14. No reason is found to differ with such observations made by the First Appellate Court and to take a contrary view in light of the facts and circumstances of the case.

15. No substantial question of law or fact arises in this appeal.

16. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Patiala.

17. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

1.2.2023

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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No