

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

RSA-1896-1990(O&M)

Date of decision:-24.2.2023

Maiya and another

...Appellants

Versus

Balbair and others

...Respondents

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

Present: Mr.Hardeep Singh Kasan, Advocate
for the appellants.

Mr.Ajay Ghangas, Advocate
for the respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Maiya and Lehna Singh both sons of Sukhi Ram, residents of village Silakheri, Tehsil Safidon, District Jind had brought a suit against defendants Balbair son and Smt.Pataso, Kishni and Bhano – daughters of Sukhi Ram, seeking a declaration that the plaintiffs are owners in joint possession in equal shares of 12/35 share each of agricultural land comprised in Khewat No.57, Khata No.69 measuring 86 kanals 14 marlas and khewat No.58 khata No.70, measuring 4 kanals 0 marla total 90 kanals 14 marlas situated in revenue estate of village Silakheri, Tehsil Safidon and that they would be entitled to 12/35 share each on partition of above land. As a consequential relief, the plaintiffs sought a decree for permanent

injunction restraining the defendants from dispossessing them from joint possession of their respective shares.

2. As per the case of the plaintiffs, one Sukhi Ram son of Data Ram was original owner of the suit land; it happened to be his ancestral property since he had inherited the same from his grandfather; Sukhi Ram had two wives, namely, Smt.Chalti and Smt.Bholi; the plaintiffs Maiya and Lehna are his sons from the womb of Smt.Bholi, whereas defendants are son and daughters from the womb of Smt.Chalti; Smt.Chalti had died in the year 1973, whereas Sukhi Ram had expired in the year 1976; Smt.Bholi left this mortal world in the year 1980; the parties are Jat agriculturists and were governed by agricultural custom of Punjab; however, on passing of Hindu Succession Act, 1956, the parties are now deemed to be from a joint Hindu family and are governed by Hindu Law in the matters of alienation and succession; during life time of Sukhi Ram, the suit land was joint family property, which had not been partitioned and was recorded in the name of Sukhi Ram alone in the revenue record; Sukhi Ram was Karta of the family; immediately before Sukhi Ram died in the year 1976, there were four coparceners in the joint family constituted by Sukhi Ram, three sons i.e. plaintiffs and defendant No.1; Smt.Bholi mother of the plaintiffs was also there, whereas Smt.Chalti had already expired in the year 1973 and by way of notional partition, the plaintiffs would have got 1/5 share each, defendant No.1 also got 1/5 share so would have Sukhi Ram and Smt.Bholi; the share of Sukhi Ram after his death would devolve upon of his seven legal heirs, therefore the share of plaintiffs and defendant No.1 came out to 8/35 each that of

Smt.Bholi 8/25 share, Smt.Pataso 1/35 share, Kishni 1/35 share and Bhano 1/35 share and entries in the revenue record showing all the seven persons as owners in equal shares i.e. 1/7th share each are factually wrong; Smt.Bholi had died in the year 1980 and plaintiffs inherited her share under Hindu Succession Act, in that way, the share of the plaintiffs came out to 12/35, that of defendant No.1 8/35, defendants No.2 to 4 1/35 share each in the suit land.

3. According to the plaintiffs, they called upon the defendants several times to admit their claim but in vain, as such they had approached the Court by way of filing the suit in Civil Court at Safidon.

4. On notice, the defendants appeared and filed a joint written statement contesting the suit raising various legal objections to wit, the suit of the plaintiffs was not maintainable; no cause of action arose to the plaintiffs to bring the suit; the plaintiffs had no locus standi to file the suit; the suit had been filed with *mala fide* intention etc. On merits, the defendants admitted their relationship *inter se* as well as with Sukhi Ram, however, they denied that the suit land has nature of ancestral coparcenary property rather the defendants claimed that it was self acquired property in the hands of Sukhi Ram. The defendants further claimed that the parties are governed by agricultural custom and not by Hindu law; after death of Sukhi Ram, the land was rightly mutated in the name of all his legal heirs i.e. plaintiffs, defendants and mother Bholi in equal shares. Similarly, after death of Bholi, the plaintiffs as well as defendants are entitled to succeed to her estate in equal shares. In the end, the defendants prayed for dismissal of the suit.

5. The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether the defendants are the sons and daughters of Smt.Chalti wife of Sukhi Ram, if so, its effect? OPP.
2. Whether the property in dispute is the ancestral and joint family property as alleged? OPP.
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPP.
4. Whether the plaintiffs have no cause of action? OPD.
5. Whether the plaintiffs have no locus-standi to file the present suit? OPD.
6. Relief.

7. Both the parties led evidence in support of their respective claims.

During the course of their evidence, the plaintiff No.1 Maiya got his statement recorded as PW1. The plaintiffs further examined Rama Nand as PW2, Chatter Singh as PW3, Phool Singh as PW4. With that the evidence of the plaintiffs stood closed.

During the course of their evidence, defendant No.1 got his statement recorded as DW1. The defendants further examined Tek Ram as DW2, Maha Singh as DW3 and Tek Ram as DW4.

In rebuttal, the plaintiffs tendered in evidence documents

Ex.P2 and Ex.P3.

8. After hearing the learned counsel for the parties, the trial Court of Sub Judge Ist Class, Safidon decided issue No.1 in favour of the plaintiffs and against the defendants; issue No.2 was decided holding that nature of the suit land is joint Hindu Coparcenary property and after death of Smt.Bholi, the plaintiffs being her natural born sons are entitled to succeed to her $\frac{8}{35}$ share equally i.e. total $\frac{12}{35}$ share each, whereas defendants being step children are not entitled to inherit her estate and their share comes out to be $\frac{8}{35}$ for defendant No.1 and $\frac{1}{35}$ share each to defendants No.2 to 4; issues No.3 to 5 were not decided being not pressed. As a result of findings on all the issues, the suit of the plaintiffs was decreed with costs vide judgment and decree dated 30.1.1988.

9. Defendants were aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Jind, which was assigned to Additional District Judge, Jind, who vide judgment and decree dated 16.8.1989 reversed the findings on issue No.1 and 2, resultantly the appeal was accepted and suit of the plaintiffs was dismissed.

10. Being dissatisfied with the judgment and decree passed by the First Appellate Court, the plaintiffs have filed the present regular second appeal before this Court, notice of which was issued and the respondent No.1 has appeared through counsel.

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

12. The crucial thing to be seen is as to what is the nature of the

suit land, whether it was the absolute ownership property of Sukhi Ram or it had nature of ancestral coparcenary property. Although the trial Court has arrived at the conclusion that such suit land in the name of Sukhi Ram was joint Hindu ancestral coparcenary property in which his sons, the plaintiffs and defendant No.1 had acquired right on account of their birth in the family but then such inference is based upon oral evidence only. There is no need saying that ancestral nature of the land does not get proved in such a manner. For proving that excerpts of the land in question are required to be got prepared to show that the property had devolved upon a person from his ancestors by way of natural succession. No such excerpts were got prepared. The trial Court has heavily relied upon the fact that defendant Balbir in his cross-examination had admitted that suit land in hands of Sukhi Ram was ancestral property and similarly other witnesses of the defendant have admitted so. Relying upon such admission, the trial Court has returned the find that nature of the land in the name of Sukhi Ram was ancestral. The whole approach of the trial Court was illegal and erroneous. In absence of the excerpts being got prepared with regard to the suit land and revenue record being there to corroborate that fact, the suit land could not possibly be taken to have nature of ancestral coparcenary property. It being so, the inference can be drawn that Sukhi Ram was absolute owner of the suit land and not in his alleged capacity as Karta of the Hindu joint family. It being so, since admittedly Sukhi Ram had died intestate, his estate is to devolve upon all his legal heirs by natural succession in equal shares. The defendants in the written statement filed by them admitted the plaintiffs to be sons of Sukhi

Ram. After death of Sukhi Ram, the land was mutated in the name of all his seven legal heirs to the extent of 1/7 share each. Though the plaintiffs are aggrieved by that fact claiming share in the suit land to the extent of 12/35 share each, but their such claim was misconceived and untenable and though it was allowed by the trial Court but was rejected by the First Appellate Court of Additional District Judge, Jind.

13. In view of the discussion above, the fact that the plaintiffs are sons of Sukhi Ram is not disputed by the defendants, who are other legal heirs of Sukhi Ram. However, the First Appellate Court has wrongly come to the conclusion that after death of Sukhi Ram his estate would not have devolved upon his legal heirs by natural succession. Learned Additional District Judge, Jind in view of the discussion in para No.11 had doubted the plaintiffs to be sons of Sukhi Ram. However, such inference arrived at by Additional District Judge, Jind is not sustainable since the defendants, who are other legal heirs of deceased Sukhi Ram themselves admit the plaintiffs to be sons of Sukhi Ram. Admission is the best type of evidence unless it is made under some misconception. No such misconception comes out to be there. Therefore, estate of Sukhi Ram had rightly devolved upon plaintiffs Maiya and Lehna Singh as well as defendant No.1 Balbir being sons, defendant No.2 Pataso, defendant No.3 Kishni, defendant No.4 Bhano daughters of Sukhi Ram as well as Bholi. The judgment passed by the First Appellate Court of Additional District Judge, Jind is modified to that extent.

21. With the above modification, the present appeal stands dismissed accordingly.

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

24.2.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No