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

**RSA-1251-1991 (O&M)
Date of Decision: 16.02.2023**

Dial Singh and others

..... Appellants

Versus

Kirpal Singh and others

..... Respondents

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

Present: None.

H.S. MADAAN, J.

As per report by the Registry, counsel for the appellants and respondent No.1 have been informed but they have not turned up. Since the appeal relate to year 1991, I do not find it appropriate and proper to adjourn it further. As such, I proceed to decide the same after going through the record.

2. Briefly stated, facts of the case are that plaintiff-Kirpal Singh had brought a suit against defendants Dial Singh and others on the averments that the suit property was earlier owned by Sh. Lachhman Singh father of the plaintiff and defendant No.1. As such the same is joint Hindu Family property qua plaintiff and defendant No.1; they along with their father Lachhman Singh constituted a joint Hindu Family. Obviously, Lachhman Singh was Karta. The property had devolved upon Lachhman Singh through his father Sh. Buta Singh. Therefore, the plaintiff and defendant No.1 had acquired right therein on account of their birth in the family. Sh.Lachhman Singh had died on 19.07.1984 leaving behind

plaintiff – Kirpal Singh, defendant No.1- Dial Singh as his sons as well as Gian Kaur defendant No.4, Balwant Kaur defendant No.5 and Santi defendant No.6 as his daughters. Shri Lachhman Singh died intestate and at the time of his death he was having $\frac{1}{3}$ rd share in the property in dispute which was inherited by all the legal heirs and the plaintiff has $\frac{6}{15}$ share in the land in dispute. According to case of the plaintiff, defendant No.1 had got a sale deed dated 16.01.1984 executed by Lachhman Singh in favour of Phuman Singh and Ravail Singh sons of Sh. Dial Singh regarding 38K-09Ms of land. According to plaintiff No.1 Lachhman Singh was not competent to sell the land to defendants No. 2 & 3. The plaintiff had filed a suit earlier in Civil Court in which Lachhman Singh and Dial Singh were party and a stay order was granted on 05.01.1984 restraining Lachhman Singh from selling the land to any person. The sale deed in question was executed during the operation of the stay order rather in its violation.

3. According to the plaintiff, there was no legal necessity available to Lachhman Singh to execute that sale deed and he had done so without consent of the plaintiff and defendant No.1.

4. On getting notice of the suit, the defendants appeared and filed a written statement contesting the suit denying that Lachhman Singh constituted a joint Hindu family along with his sons and daughters and the property had been a joint and coparcenary property. According to the defendants, the plaintiff had separated from the family a long ago and he had been moving about in the company of Baba Buda Dal Nihangs for several years. As a matter of fact, the land in dispute in the name of Lachhman Singh was self acquired property which he could dispose of and plaintiff had no right or interest therein. All the defendants prayed for

dismissal of the suit except defendant No.5 who in her separate written statement filed had admitted the claim of the plaintiff.

5. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint. On the pleadings of the parties, following issues were framed:

- “1. *Whether the plaintiff is a member of HUF as alleged by him in the plaint and as such has locus standi to file the present suit? OPP*
2. *Whether the suit is not maintainable in the present form?OPD*
3. *Whether the present suit is bad on account of constructive res judicata and Order 2 Rule 2 CPC?OPD*
4. *Whether the suit is properly valued for the purpose of court fee and jurisdiction?OPP*
5. *Whether the suit for joint possession and declaration is maintainable in the present form?OPP*
6. *Whether the land in dispute is ancestral, if so, its effect?OPP*
7. *Whether the sale deed dated 16.1.1984 in favour of defendants No.2 and 3 is illegal, void or without legal necessity,if so, its effect? Onus on Parties.*
8. *Relief.”*

6. Parties were afforded adequate opportunity to lead evidence in support of their respective claims.

7. During the course of his evidence, the plaintiff himself appeared as PW-1 and he further examined Sh. Chanan Singh as PW-2.

8. In rebuttal, the contesting defendants examined Onkar Nath as DW-1, Harbans Lal as DW-2, Gurmukh Singh as DW-3, Tara Singh as DW-4, Sulakhan Singh as DW-5 and defendant Dial Singh himself appeared as DW-6. The defendants relied upon various documents.

9. After hearing learned counsel for the parties, the trial Court of Sub Judge 2nd Class, Amritsar decided issues No.1 and 6 in favour of the plaintiff and against the defendants, issue No.2 was decided against the defendant and in favour of the plaintiff, issue No.3 was decided against the defendants and in favour of the plaintiff, issue No.4 was decided in favour of the plaintiff and against the defendant, issue No.5 was decided in favour of the plaintiff and against the defendants and issue No. 7 was decided in favour of the plaintiff and against defendants No. 1 to 3.

10. Vide judgment dated 12.12.1986, the suit of the plaintiff was decreed for joint possession to the extent of 6/15 share of the land in dispute which was owned and possessed by Lachhman Singh before his death. It was directed that this share of the plaintiff shall be out of the total share of land in dispute which was owned by Lachhman Singh and the sale deed dated 16.01.1984 executed by Lachhman Singh in favour of defendants No. 2 & 3 was declared to be illegal, inoperative and without legal necessity or for the benefit of the estate.

11. Feeling aggrieved by the said judgment and decree by the trial Court, defendant Dial Singh and his son Phuman Singh as well as minor son Ravail Singh had filed an appeal before the District Judge, Amritsar, which was assigned to Addl. District Judge, Amritsar. That appeal was dismissed vide order dated 08.03.1991. Still feeling aggrieved, the contesting defendants have knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted. Notice of the appeal was given to respondent-plaintiff. Respondent No.1 had initially put in appearance, subsequently the appellants and respondent No.1 stopped appearing in the Court.

12. After going through the impugned judgments, I do not find any illegality or infirmity therein. Both the Courts on proper and thorough analysis of the evidence brought on record by the parties in view of the factual and legal position had returned concurrent finding that Lachhman Singh deceased constituted a joint Hindu family along with his sons plaintiff Kirpal Singh and defendant Dial Singh as well as his daughters and land was ancestral coparcenary property. It being so, the plaintiff had acquired a right there by a reason of birth in the family to the extent of $\frac{1}{3}^{\text{rd}}$ share. As such, Lachhman Singh being Karta of the joint Hindu family could make alienation out of the joint Hindu family property only for legal necessity or for benefit of estate. The sale deed executed by him in favour of defendants No. 2 & 3, who are sons of Dial Singh, do not come out to be for that purpose. Since Lachhman Singh had died intestate without leaving behind any will, $\frac{1}{3}^{\text{rd}}$ share in his name is to pass by natural succession to his legal heirs. In that way, share of plaintiff came to be $\frac{6}{15}^{\text{th}}$. The stand taken by the contesting defendants that the property in the name of Lachhman Singh was self-acquired property with which he could deal in any manner he felt like, and the sale deed dated 16.1.1984 by Lachhman Singh in favour of defendants No.2 and 3 is legal and valid, was rejected by both the Courts below. I do not find any fault with such conclusions drawn by the Courts below. The judgments passed by the Courts below are as a result of proper appraisal of evidence and correct appreciation of law. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees. Those judgments and decrees are upheld.

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

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

16.02.2023

Satyawan

**(H.S. MADAAN)
JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No