

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

RSA-2925-2001(O&M)

Reserved on:-11.5.2023

Date of Pronouncement:-17.5.2023

Maru Ram and another

...Appellants

Versus

Dev Dutt and others

...Respondents

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

Present: Mr.Vijay Kumar Jindal, Sr.Advocate with
Mr.Pankaj Gautam, Advocate
for the appellants.

None for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Dev Dutt s/o Hardwari Lal, resident of village Lawan, Tehsil & District Mahendergarh, Bisvedar Pali, Tehsil & District Mahendergarh had brought a suit against defendants Maru Ram, Om Parkash, Ved Parkash – sons, Smt.Payari Devi wife of Hardawari Lal as well as Hardwari Lal, Smt.Suva Devi, Smt.Sulochna, Smt.Sanehlata, Smt.Sushila, all married daughters of Hardwari Lal, residents of village Lawan Bisvedars Pali Tehsil and District Mahendergarh, seeking a declaration that plaintiff is owner in possession of 1/9 share in agricultural land comprised in khewat no.500 khatauni no.733,

kitas 6 measuring 43 kanals 7 marlas and 1/18 share in agricultural land comprised in khewat no.502 khatauni no.735 kitat 9 measuring 47 kanals 8 marlas situated at village Pali Tehsil and District Mahendergarh as a coparcener and that judgment and decree dated 20.1.1990 passed in Civil Suit No.905 of 9.10.1989 titled 'Om Parkash etc. Versus Hardawari Lal' and judgment and decree dated 16.3.1990 passed in Civil Suit No.61 of 25.1.1990 titled 'Maru Ram etc. Versus Hardawari Lal' are illegal, null and void.

2. As per the version of the plaintiff, he along with defendants No.1 to 3 are sons of defendant No.5 from defendant No.4 Smt.Payari Devi, who is second wife of defendant No.5 Hardawari Lal; the parties constituted a joint Hindu family and suit land is ancestral joint Hindu family property owned and possessed by coparceners; the defendants had filed Civil Suit No.673/15.9.1989 titled 'Maru Ram etc. Versus Hardwari Lal', which was for seeking a declaration; in that suit plaintiff had filed an application under Order 1 Rule 10 CPC, which was allowed on 31.7.1989; then the defendants, who are plaintiffs in that civil suit had withdrawn the suit on 27.9.1989; thereafter defendants No.1 to 4 had filed Civil Suit No.905 of 9.10.1989 titled 'Om Parkash etc. Versus Hardawari Lal' in which defendant No.5 Hardawari Lal had wrongly suffered judgment and decree on 20.1.1990; similarly defendants No.1 to 4 had filed a Civil Suit No.61 of 25.1.1990 titled as 'Maru Ram etc.

Versus Hardawari Lal' in which again Hardawari Lal had suffered judgment and decree on 16.3.1990.

According to the plaintiff, the judgments and decrees passed in these two civil suits are illegal, null and void and are ineffective qua his rights and when the defendants refused to concede his claim, he had brought the suit in question. In the beginning the suit had been filed by plaintiffs Ishwar Singh and Dev Dutt against defendants No.1 and 5 but subsequently plaintiff Ishwar Singh withdrew his suit, whereas defendants No.6 to 9 were then impleaded.

3. On getting notice, defendants put in appearance. The contest was offered by defendants No.1 to 4 and 5. Defendants No.1 to 4 had filed a joint written statement, whereas defendant No.5 came up with a separate written statement. The stand taken in those written statements is almost identical. It was denied that the suit land is coparcenary property, rather it was asserted that this property is self acquired property of defendant N.5 Hardawari Lal with which the plaintiff has no concern; the parties are Ahirs by caste and are agriculturists; they are governed by custom and not Hindu Law; defendant No.5 being owner of the suit land had given it to defendants No.1 to 4 voluntarily by way of a family settlement and had suffered the judgments and decrees in two civil suits voluntarily out of his free will in lieu of services rendered by defendants No.1 to

4 to him; these judgments and decrees are perfectly legal and plaintiff has no right to challenge the same. The defendants had raised various legal objections also while craving for dismissal of the suit.

In the written statement filed by defendant No.6, she admitted the claim of the plaintiff with regard to nature of land being coparcenary and impugned judgments and decrees being illegal, null and void. According to defendant No.6, defendants No.6 to 9 were also owners of the suit land. Such defendant prayed that the suit be decreed. Subsequently since there was no representation on behalf of defendant No.6, she was proceeded against ex-parte on 21.7.1997.

Defendants No.7 to 9 had failed to put in appearance despite service as such were proceeded against ex-parte.

4. The plaintiff had filed replication controverting the allegations in the written statements whereas reiterating the averments in the plaint.

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

1. Whether the plaintiff is owner in possession of the suit land as alleged in para 1 of the plaint? If so, to what effect? OPP.
2. Whether the judgment and decree passed in civil suit no.905 of 1989 decided on 20.1.90; and C.S. No.61 of 1990 decided on 16.3.90 are illegal, null and void and based on fraud and liable

to be set aside? OPP.

3. Whether the suit is not maintainable in the present form? OPD.

4. Whether the suit land is self acquired property of defendant no.5? If so, to what effect? OPD.

5. Whether the suit is liable to be dismissed with special costs? OPD.

6. Relief.

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

7. After hearing the learned counsel for the parties, the trial Court of Addl.Civil Judge(Sr.Divn.) vide judgment and decree dated 28.7.1997 decreed the suit of the plaintiff with costs.

8. Feeling aggrieved by the said judgment and decree, the defendants No.1 to 4 had filed an appeal before District Judge, Narnaul, which was assigned to Additional District Judge, Narnaul, who vide judgment and decree dated 11.5.2001 dismissed the same upholding the impugned judgment and decree passed by the trial Court.

9. Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendants No.1 and 2 have filed the present regular second appeal before this Court, notice of which was issued and the respondents and earlier they had put in appearance through counsel. The appeal was dismissed for non-prosecution vide

order dated 30.4.2019. However, it was restored vide order dated 31.1.2020. That order was passed in presence of counsel for the parties. Subsequently counsel for the respondents pleaded no instructions on behalf of the respondent and he was allowed to withdraw from the case on 13.3.2023.

10. I have heard learned counsel for the appellants besides going through the records.

11. A perusal of the impugned judgments goes to show that the trial Court has come to the conclusion that the land held by Hardawari Lal was joint Hindu family property on the basis of sale deed No.17 dated 19.1.1955 Ex.D2; the land having been purchased by plaintiff Dev Dutt and Hardawari Lal vide said sale deed and mutation No.1992 having been sanctioned on 8.2.1962 Ex.D4 and that the suit land was allotted in lieu of that land at the time of consolidation. The trial Court has further relied upon admission said to have been made by DW2 Maru Ram that suit land had nature of ancestral property for the reason that suit land came to Hardawari Lal from his father Nanag Ram.

12. The approach of the trial Court was obviously wrong and erroneous in coming to this conclusion. In order to find out as to whether nature of the property held by a person is ancestral excerpts are to be got prepared and then the revenue official, who had prepared the excerpts is to be examined to find out that the property

had devolved upon a owner from his ancestors by natural succession and not by any other mode like testamentary succession, gift or by any other form of transfer. No such excerpts were got prepared in this case. Simply on the basis of some entries in the revenue record and admissions said to have been made by witnesses, who appeared on behalf of the defendants, the nature of the land could not possibly be taken to be ancestral. It was specific case of the defendants that the property in question is self acquired property of Hardawari Lal. For being successful in the suit it was incumbent upon the plaintiff to prove the ancestral nature of the property by bringing cogent, convincing and reliable evidence including getting the excerpts prepared with regard to the suit property but he has obviously failed in that endeavour. The trial Court has wrongly put the burden upon the defendants to show that it was self acquired property of Hardawari Lal. It was consistent stand of the defendants that plaintiff Dev Dutt had separated from his father and other family members in the year 1947 and there has been partition between him and his father Hardawari Lal. DW1 Hansraj, DW3 Bhagwan Sarup and DW4 Hardawari Lal had categorically deposed in that regard. With ancestral nature of property having not been established, there could not be any question of Hardawari Lal holding the land as Karta of the family and plaintiff along with other sons of Hardawari Lal being coparceners acquiring right in the suit property by reason of their

birth in the family. It being so, Hardawari Lal could not transferred his properties to defendants No.1 to 4 by suffering consent decrees. The impugned judgments and decrees cannot be set aside for the reason of non-registration.

13. Learned counsel for the appellant has referred to judgment **Govindbhai Chhotabhai Patel & Ors. Versus Patel Ramanbhai Mathurbhai**, Civil Appeal No.7528 of 2019, decided on 23.9.2019, wherein the Apex Court had observed that when the father had purchased property, its nature would be self acquired and if father executed will in favour of his son, the beneficiary would acquire property as self acquired property and not as ancestral and once property held to be acquired as self acquired beneficiary is competent to deal with property in such manner he consider proper including execution of gift deed in favour of stranger to family. He has further referred to judgment ***Prabhu Lal Versus Laxmi and others*** passed by this Court in Regular Second Appeal No.4642 of 2000, decided on 2.8.2006, wherein it was observed that a family settlement between brothers and sisters with regard to the property inherited by father does not require registration. Another judgment **Brij Lal Versus Daulat Ram and others** passed by this Court in RSA No.729 of 1965, decided on 31.3.1976 was relied upon wherein while dealing with the aspect of ancestral property, it was observed that under Mitakshara law sons, grandsons and great grandsons of a

person inheriting ancestral property acquired interest in it by birth and it becomes coparcenary property.

14. Considering the facts and circumstances of the case, the judgments and decrees could not have been set aside on account of non-registration more particularly when the plaintiff failed to establish that he has got any right to challenge the same since ancestral coparcenary nature of the property could not be established.

15. Learned Additional District Judge, Narnaul has affirmed the judgment and decree passed by the trial Court mainly for the reason that the impugned decrees were not registered. In light of the discussion above, the view taken by the Additional District Judge, Narnaul cannot be sustained.

16. The judgments are result of misappraisal of evidence and misinterpretation of law, which has resulted in miscarriage of justice. Therefore, the judgments and decrees passed by the Courts below are hereby set aside by way of acceptance of appeal. Resultantly, the suit of the plaintiffs stands dismissed.

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

17.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No