

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

RSA-5157 of 2019

Date of decision: 02.08.2023

Ravinder Singh and others

.....Appellants

Versus

Amarjit Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Liaqat Ali, Advocate,
for the appellants.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 17.02.2017 passed by Civil Judge (Junior Division), Phillaur, whereby suit for declaration filed by the plaintiff-appellants has been dismissed as well as against the judgment and decree dated 23.04.2019 passed by Additional District Judge, Jalandhar, whereby appeal filed by the plaintiff-appellants against the judgment and decree dated 17.02.2017, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The facts relevant for disposal of this regular second appeal are that plaintiffs filed a suit for declaration to the effect that the suit land (fully described in the headnote of the plaint) situated in Vill.Chaulang is the JHF/ coparcenary/ancestral property of the plaintiffs and defendants. Defendant No.1 is the Karta

of JHF/coparcenary consisting of plaintiffs and defendants. The suit land was originally owned by Harnam Singh and after his death, it was devolved upon his son Punjab Singh. Punjab Singh died in the year 1959 and on his demise, the property devolved upon his three sons and one daughter namely Bikkar Singh, Kehar Singh, Karam Singh and Karmi respectively. Karam Singh, grandfather of the plaintiffs, died intestate in the year 1995 and after his death, his estate devolved on his three sons namely Gurdev Singh, Amarjit Singh and Harbans Singh. In this way, defendant No.1-Amarjit Singh is Karta of Joint Hindu Family and responsible for affairs to manage the suit land. It was further pleaded that plaintiff and defendant No.2 are also coparceners in the suit land. Other brothers of defendant-Amarjit Singh i.e. son of Karam Singh had separated their shares, so they are not impleaded party in the present suit. Plaintiffs have further pleaded that there was another estate of Punjab Singh in village Machiana and it also devolved upon his three sons namely Bikkar Singh, Kehar Singh, Karam Singh and one daughter namely Karmi in equal shares. Karam Singh sold his share in the land situated at Machiana inherited by him from Gurnam Singh and with its income, he purchased the suit land from Central Government and another land measuring 16 Kanals 19 Marlas from Gurmej Kaur, as such, the character of the suit land in the hands of Karam Singh was ancestral. It was further pleaded by the plaintiffs that defendant No.1 led a luxurious life and he arranged three marriages and sold certain properties without any legal necessity. The sale deed in the present *lis* is challenged on the ground that it is qua Joint Hindu/coparcenary/

ancestral property and it was executed without consideration being result of fraud and misrepresentation and without legal necessity. Plaintiffs requested the defendants to admit their claim, but instead of admitting the claim of plaintiffs, defendant No.2 threatened to alienate the suit property for which she has got no right.

3. Upon notice of the suit, defendants appeared and filed their separate written statements. Defendant No.1- Amarjit Singh filed written statement taking preliminary objections on the grounds of maintainability; act and conduct; and concealment of true and material facts. As a matter of fact, defendant No.1 is exclusive owner in possession of the property measuring 12 Kanals 11 Marlas 3 Sarsai out of the suit land. Defendant No.2 in connivance with witnesses and scribe under the impact of intoxication got executed the impugned sale deed dated 12.08.2011 in her favour without any consideration. The alleged sale deed dated 12.08.2011 is illegal, null and void, without any consideration and is result of fraud and misrepresentation. It was further pleaded that the defendant No.2 got sanctioned the mutation in her favour on the basis of impugned sale deed, which is also wrong, illegal, null and void and is not binding upon the rights of defendant No.1. In fact, defendant No.1 is owner in possession of the property in question to the extent of his share i.e., 12 Kanals 11 Marlas 3 Sarsai, as the property in question is Joint Hindu Family/coparcenary/ancestral property of the plaintiffs and defendant No.1 and the defendant No.1 is the Karta of the JHF/Coparcenary consisting of parties to the present

lis. On merits, all the material averments have been denied and prayer is made for dismissal of the suit.

4. Defendant No.2 in her written statement contested the averments of the plaint by taking preliminary objections *qua* maintainability; cause of action; *locus standi*; concealment of true and material facts; suit is not valued for the purpose of court fee and jurisdiction. On merits, it was denied that the property in question is Joint Hindu Family/coparcenary or ancestral property. In fact, the property was exclusively owned and possessed by defendant No.1 in his personal capacity. It was further pleaded that the property in the hands of Amarjit Singh was his ownership, who had transferred the same in favour of defendant No.1 vide sale deed for valuable consideration. All the relevant parties have not been pleaded as party in the present suit, therefore, suit is bad for non-joinder and mis-joinder of necessary parties. The sale deed dated 12.08.2011 is legal and is for valuable consideration. The defendant No.2 being the sole owner on the basis of sale deed dated 12.08.2011 has every right to deal with the property in the manner she likes. All the remaining material averments have been denied and prayer is made for dismissal of the suit.

5. Replication to the written statement was filed reiterating the averments as taken in the plaint and controverting that of the defendant No.2 as taken in the written statement.

6. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiffs are entitled to the declaration as prayed for?OPP

2. Whether plaintiffs are entitled to permanent injunction as prayed for?OPP
 3. Whether the plaintiffs are estopped by their own act and conduct from instituting the present suit as prayed for?OPD
 4. Whether the plaintiffs have no cause of action to institute the present suit?OPD
 5. Whether the plaintiffs have not come to the Court with clean hands?OPD
 6. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction?OPD
 7. Whether the present such is not maintainable? OPD
 8. Whether the plaintiffs have no locus standi to file the present suit?OPD
 9. Relief.
7. In order to prove their case, plaintiffs examined-Piara Singh as P.W1, Gurdev Ram as P.W2, plaintiff-Ravinder Singh himself appeared as P.W3. Thereafter, learned counsel for the plaintiffs closed the evidence.
8. On the other hand, defendant No.2-Manjit Kaur herself stepped into the witness box as D.W1 and thereafter, defendant No.2 closed the evidence. However, learned counsel for the defendant No.1 closed the evidence without adducing any evidence.
9. Learned counsel for the plaintiffs closed the rebuttal evidence without adducing any evidence.
10. After hearing the learned counsel for the parties, trial Court dismissed the suit of the plaintiffs vide its judgment and decree dated 17.02.2017.

11. Feeling aggrieved against the said judgment and decree, plaintiffs filed appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 23.04.2019.

12. Learned counsel for the appellants contended that findings recorded by both the Courts below are based on conjectures and surmises. Both the Courts below have failed to appreciate the evidence produced by the appellant. He has further contended that the evidence led by the appellants has gone unrebutted on the record, as such, the suit was liable to be decreed. He further contended that defendant-respondents have specifically admitted the claim of the plaintiff-appellants in their pleadings and evidence during cross-examination. He further contended that respondent No.1 has also specifically admitted the nature of the suit land being a Joint Hindu Family Coparcenary/ancestral property and that he is *karta* of Joint Hindu Family and the appellants are members of the Joint Hindu Family and the property in dispute. He further contended that both the Courts below have also failed to appreciate that respondent No.1 has specifically stated that sale deed was got executed by respondent No.2 fraudulently without any consideration. He contended that the judgments and decrees passed by both the Courts below are erroneous, which are liable to be reversed and suit of the appellants deserves to be decreed.

13. I have heard learned counsel for the appellants and perused the record.

14. Perusal of the record shows that after the death of Karam Singh, the property, which was inherited by his three sons namely Gurdev Singh, Amarjit Singh and Harbans Singh, was partitioned amongst them and as such, they held the property after partition of the same as per their share separately and independently. After partition, each of the three brothers namely Gurdev Singh, Amarjit Singh and Harbans Singh became owners of the property in their personal capacity. As such, the property had lost its character of being ancestral property. It is the case of the plaintiffs that Karam Singh had been purchasing and selling properties with the proceeds of the ancestral properties, however, they have failed to bring on record any such evidence to establish any connection between the property purchased by Karam Singh with the income of the property, which was stated to be inherited by him from his forefathers. Thus, the appellants/plaintiffs have failed to prove on record that the suit property is ancestral in nature. The appellate Court has rightly observed that it is settled legal proposition that the property inherited up to four generations of male lineage which means father, grandfather, great grandfather and great-great grandfather is called ancestral property and said ancestral property should have remained undivided till the fourth generation upwards. It is further settled proposition that any property, which is divided through a partition deed or any family arrangement etc., loses its ancestral character. The prerequisite is that the property should not have been divided by the users in the Hindu undivided family as once a division of the property takes place, the share or portion which each

coparcener gets after the division becomes his or her self-acquired property. Apparently, any property which has been previously partitioned or which has been distributed in accordance with Section 8 of the Hindu Succession Act 1956, on principles of intestacy ceases to be joint family property and no suit for partition would lie in respect of such property. Admittedly, in the present case the last common ancestor of defendant No.1 had expired and all the three brothers namely Gurdev Singh, Amarjit Singh and Harbans Singh had partitioned the property in question amongst themselves, as such, the character of the property being ancestral has already been lost. Therefore, defendant No.1 was not holding the property in question as a *Karta*, but as his self-acquired property.

15. So far as the argument advanced by learned counsel for the appellants that the sale deed in question is without consideration, is concerned, such a plea in the considered opinion of this Court cannot be raised by non-executant of the sale deed. The law is well settled on this aspect of the case that only the executant of the sale deed i.e., vendor of the suit property can put up a plea seeking declaration of the sale deed to be null and void on the ground of non-payment of the sale consideration, whereas, in the present case, plaintiff-appellants were not party to the sale deed and that being so, such plea would not be maintainable on their behalf. The property in question was sold by respondent No.1 in favour of respondent No.2 for an amount of Rs.11,90,000/- vide sale deed dated 12.08.2011 Ex.P3 and she is owner in possession of the suit land. Therefore, it does not lie in the mouth of

the appellants that sale deed was without consideration. Moreover, respondent No.1 did not step into the witness box to support the case of the plaintiff-appellants that sale deed was got executed by respondent No.2 fraudulently without consideration.

16. Concurrent findings have been recorded by both the Courts below that plaintiffs failed to prove on record that property in question was Joint Hindu Coparcenary Property and the same was sold by respondent No.1 to respondent No.2 without consideration. Learned counsel for the appellants has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

17.. In view of above, no question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

18. Dismissed.

02.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No