

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

RSA-951-2005(O&M)

Reserved on:-15.3.2023

Date of decision:-27.3.2023

Bhagwant Singh and others

...Appellants

Versus

Smt.Gurmeet Kaur and another

...Respondents

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

Present: Mr.Anil Ghangas, Advocate
for the appellant.

Mr.Som Nath Saini, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Bhagwant Singh, Harpal Singh and Balwinder Singh sons of Jeet Singh, residents of village Hassanpur, Tehsil Dera Bassi, District Patiala had brought a suit against defendants i.e. Gurmeet Kaur, widow of their pre-deceased brother Mihaan Singh son of Jeet Singh and father Jeet Singh, residents of that very village, seeking a declaration that land measuring 13 bighas 5 biswas being 1/3 share of land measuring 39 bighas 14 biswas situated at village Hassanpur, Tehsil Dera Bassi, District Patiala is joint Hindu family ancestral coparcenary property of plaintiffs and defendant No.2 in which plaintiffs have got 3/4 share and that judgment and decree dated 16.10.1998 passed in appeal by Additional District Judge, decreeing civil suit No.131 of 6.5.1995 are illegal, wrong and ineffective qua rights of the

plaintiffs; in addition to that the plaintiffs craved for grant of permanent injunction restraining the defendant No.1 from getting the land in dispute attached and sold in execution of the judgment and decree.

2. As per the version of the plaintiffs, they are sons of Jeet Singh – defendant No.2; Jeet Singh had another son Mihaan Singh, who had died in March, 1994 and he had left behind defendant No.1 Gurmeet Kaur as his widow; Jeet Singh has land which as a matter of fact is joint Hindu family ancestral coparcenary property qua the plaintiffs and their father defendant No.2; the plaintiffs have got right and interest in this property by birth; defendant No.1 Gurmeet Kaur had filed a suit against her father-in-law defendant No.2 Jeet Singh seeking maintenance and for creating charge of the maintenance amount over the property in the name of Jeet Singh; the suit was dismissed vide judgment and decree dated 19.9.1997 by the trial Court of Additional Civil Judge(Sr.Divn) but on an appeal having been filed by Gurmeet Kaur, the same was accepted by Additional District Judge, Patiala on 16.10.1998 holding that land in dispute measuring 13 bighas 5 biswas is joint Hindu family ancestral coparcenary property in the hands of Jeet Singh defendant No.2, therefore suit of Gurmeet Kaur for maintenance was decreed; the defendant had not disclosed to the Courts that defendant Jeet Singh had three more sons; the maintenance thus could not have been granted against the entire suit land; the plaintiffs challenged the judgment and decree passed in Civil Appeal No.293 of 28.10.1997 being illegal and ineffective qua their rights further contending that defendant No.1 Gurmeet Kaur has no right to get the land attached and sold in execution of decree dated 16.10.1998.

3. On getting notice, both the defendants appeared. Defendant No.2 admitted the claim of the plaintiffs pleading no objection, if suit of the plaintiffs was decreed. Whereas the contest was offered by defendant No.1, who in the written statement filed by her contended that in the suit for grant of maintenance filed by her against her father-in-law Jeet Singh, the latter had filed written statement besides leading evidence. The plaintiffs were having knowledge regarding such litigation and out of the total land of 39 bighas 14 biswas charge has been created on 1/3rd share and that her father-in-law is responsible to maintain widowed daughter-in-law in case he holds ancestral and coparcenary property; defendant No.1 had defended the judgment and decree passed by Additional District Judge, Patiala stating that she has every right to get the judgment and decree executed and to get the suit property attached; she further alleged that suit had been filed with a view to harass her and to prevent her from executing the decree. Refuting the remaining allegations, she prayed for dismissal of the suit.

4. The plaintiffs had filed replication controverting the allegations in the written statement of defendant No.1 whereas reiterating the averments in the plaint. On the pleadings of the parties, following issues were framed:

1. Whether suit property measuring 13 biswas 5 biswas out of 39 bighas 14 biswas being 1/3rd share is joint Hindu family coparcenary property? OPP.
2. Whether judgment and decree dt. 16.10.98 is illegal, null and void? OPP.

3. Whether plaintiffs are entitled to decree for declaration as prayed for? OPP.

4. Whether plaintiffs are entitled for permanent injunction? OPP.

5. Whether plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.

6. Relief.

5. The parties led evidence in support of their respective claims.

6. After hearing learned counsel for the parties, the trial Court decided issue No.1 holding that the property in question has already been held to be joint Hindu family ancestral coparcenary property in the earlier litigation in which judgment copy Ex.P7 and decreed-sheet Ex.P8 were passed, therefore the matter could not be re-agitated. Issues No.2 and 3 were decided against the plaintiffs; issue No.4 was decided against the plaintiffs observing that they are not entitled to injunction prayed for. Issue No.5 was decided against the defendants. As a result of finding on all the issues, the suit of the plaintiffs was dismissed with costs vide judgment and decree dated 10.3.2004.

7. Feeling aggrieved by the said judgment and decree, the plaintiffs 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 2.9.2004 dismissed the same.

8. Still feeling dissatisfied, the plaintiffs have knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and his suit be decreed.

9. Notice of the appeal was issued to the respondents/defendants. However, only respondent No.1 put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record and I find that the appeal is absolutely without merit.

11. Both the Courts below by proper analysis of the evidence and correct interpretation of law have arrived at the conclusion that the land in the name of Jeet Singh is joint Hindu family ancestral coparcenary property and further a widowed daughter-in-law has got a right to get maintenance from her father-in-law and though the trial Court had dismissed the claim for maintenance raised by defendant No.1 Gurmeet Kaur from her father-in-law Jeet Singh defendant No.2 but the First Appellate Court had rectified that error and granted maintenance to Gurmeet Kaur payable by her father-in-law Jeet Singh – defendant No.2. There is absolutely no reason to set aside the judgment and decree passed by the First Appellate Court in that regard. The plaintiffs have got no right to get the impugned judgment and decree declared as illegal or ineffective qua rights of the plaintiffs.

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

13. The appeal stands dismissed accordingly.

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

27.3.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**