

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

112

RSA-5479 of 2019(O&M)
Date of Decision:02.08.2023

GURCHARAN SINGH

....Appellant

Versus

SWARAN SINGH AND ANR

...Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. S.S. Panag, Advocate
for the appellant.

SANJAY VASHISTH, J.(Oral)

1. Appellant-Gurcharan Singh has filed the present appeal against the concurrent findings of dismissal of suit filed by the plaintiff for seeking a decree of declaration qua his half share in the property succeeded from his father Chanan Singh-defendant No.2.

2. Appellant (herein referred as 'plaintiff') pleaded in the suit that the property detailed in the headnote of the plaint is the ancestral and coparcenary property, which was inherited from their fore-fathers. In the oral family settlement dated 20.10.2013, defendant No.2 (father of the plaintiff and defendant No.1) gave the land to the extent of 1/2 share each to the plaintiff and defendant No.1 in equal shares. Thus, now being in the joint possession of the suit land, he is entitled for 1/2 of the share.

3. In the written statement filed by defendants, it is pleaded that the defendant No.2 is the owner in possession of the property in

dispute and plaintiff has no right, title or concern with the same in any manner. The suit property is claimed to be self acquired property of defendant No.2. It is also pleaded that plaintiff is residing separately from the defendants from the last about twenty four years. Being absolute owner in possession of the property, defendant No.2 has claimed his all the rights to deal with the same in the manner he wishes.

4. It is further pleaded that defendant No.2 is a small farmer and he nourished and provided better education facilities to the plaintiff by spending huge amount as per his financial capacity and by doing hard work and also got performed the marriage of the plaintiff and got employed the plaintiff as Secretary in the Co-operative Societies with a hope that plaintiff will become shelter for defendant No.2. However, due to the strained relations with defendant No.2, now he started claiming half of the share in property, without there being any basis with him.

5. In the replication filed by the plaintiff, facts stated in the plaint were reiterated and thereafter, learned trial Court framed following six issues.

Issue No.1. Whether the plaintiff is entitled for declaration, as prayed for? *OPP*

Issue No.2. Whether the plaintiff is entitled for permanent injunction, as prayed for? *OPP*

Issue No.3. Whether the suit is not maintainable? *OPD*

Issue No.4. Whether the plaintiff has got no cause of action and locus-standi to file the present suit? *OPD.*

Issue No.5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? *OPD*

Issue No.6. Relief

Qua issue No.1, a categoric finding is recorded by learned trial Court that from the documents produced by the plaintiff i.e. Jamabandi's Ex.P1 to P4, there is nothing proved that the land in question is ancestral and coparcenary.

6. Except the said Jamabandis, there was no other documentary evidence by which the defects pleaded by the plaintiff could get any strength.

7. On the contrary, Court held that from the photocopies of the sale deeds mark A & mark C and certified copy of mutation No.461 (Ex.D3), defendant No.2-Chanan Singh succeeded the property of Rattan Singh through registered Will dated 02.06.1993. It was concluded that the property was exclusively owned by defendant No.2 and cannot be declared as coparcenary or ancestral property in any manner, thus, Court held that the property in the hands of defendant No.2 is self acquired property.

8. So far as question of oral family settlement dated 20.10.2013 is concerned, plaintiff failed to lead any evidence to establish the pleadings. Even the Court has taken note of the admissions made by the plaintiff, wherein he has clearly admitted the facts mentioned in the written statement that he got married about 25 years back and thereafter, plaintiff and his wife separated from the family of plaintiff around 5/7 years after the said marriage. Even, it is clearly admitted that the accounts of the plaintiff are separate from the

defendants, since the time of separation from the defendant. Meaning thereby, the said accounts are separate from the other family for the last about 17 years, at the time of recording of the evidence in the suit proceedings. Thus, the plea of oral family settlement on 20.10.2013 is not proved.

9. It is also admitted by the plaintiff that out of his income/salary, he never gave any money to his father-defendant No.2 since the time of his separation from him. Even he has not asked about their well being and never provided any medication during this period and since the time of separation, he is not even on talking terms with his father and brother.

10. For the sake of convenience, findings recorded by learned trial Court in paragraph Nos.11, 12 and 13 are reproduced here under:

11. Heard. Record perused. After hearing learned counsel for the parties and perusing the record, especially the pleadings of the parties, it appears that plaintiff is claiming that suit property is ancestral and coparcenary property and same was divided by defendant No.2 between plaintiff and defendant No. 1 in equal shares in an oral family settlement dated 20.10.2013 and thus he sought the declaratory and injunctive relief vide present suit. In view of such claim, the onus to prove the aforesaid facts regarding ancestral and coparcenary nature of land and that of family settlement was on the plaintiff, but from the material on record, it appears that plaintiff has failed to prove these facts. The plaintiff has failed to prove the fact that suit land is ancestral and coparcenary land because except the

Jamabandies Ex PI to Ex.P4 he has not placed and proved on record any document to show that how defendant No.2 Chanan Singh became owner of the suit land. To come to the conclusion that suit land was coparcenary and ancestral property, perusal of such documents was necessary. On the contrary the defendants have placed on record photocopies of sale deeds mark A to mark C vide which defendant No.2 purchased the property and certified copy of mutation No 461 Ex D3 as per which the defendant No.2 Chanan Singh succeeded the property of Rattan Singh through registered Will dated 2.6.1993. From these documents it becomes very much clear that the property succeeded by defendant No.2 Chanan Singh through these documents ie mark A to mark C and Ex D3 became his separate property and is not and no more coparcenary or ancestral property. In view of these circumstances, it can be said that suit property is not ancestral and coparcenary property, as alleged by the plaintiff, rather it is separate property of defendant No.2 and thus the stand of plaintiff that suit property is ancestral and coparcenary property is false.

12. *So far as question of oral family settlement dated 20.10.2013 is concerned, it also appears that plaintiff has failed to prove said alleged family settlement as well, as no cogent evidence qua said alleged oral family settlement has been led by the plaintiff. More over from the testimony of both the PWS said alleged oral family settlement appears to be highly improbable as PW.1 Karnail Singh during his cross-examination on page No.1, thereof, has stated that plaintiff married to his sister about 25 years back and he Le plaintiff and his wife separated from the family of plaintiff 5/7 years after said marriage and on*

page No.4 of his cross-examination PW1 stated that accounts of plaintiff are separate from the defendants since the time of his separation from the defendants. From these facts it appears that since plaintiff is residing separately from defendants for last about 20 years, so question of alleged oral family settlement may not arise at all. Even plaintiff as PW.2 during his cross-examination on page No.3 and 4, thereof has admitted that he has not given any money out of his salary to his father since the time of his separation from him i.e. for last about 25 years and even he has not asked about their well being and never provided any medication to them during this period and since the time of his separation he is not on talking terms with his father and brother i.e. defendant. These admissions on the part of plaintiff himself also renders the alleged oral family settlement as alleged by the plaintiff highly improbable, because notice can be taken of the fact that if any son is not on talking terms with father, then why father will give him any of his property in family settlement. Since plaintiff has failed to prove said alleged oral family settlement, so he is not entitled to any declaratory or injunctive relief, as claimed in the suit.

13. *In view of the aforesaid observations it can safely be concluded that plaintiff has failed to discharge the onus placed upon him vide-these issues So, these issues are decided against the plaintiff*

11. Even before the Appellate Court, record was thoroughly examined again and nothing wrong/incorrect was found in the appreciation of evidence made by the Trial Court.

12. After filing of the suit on 29.11.2013, never any attempt

was made by the appellant to lead any evidence, however, counsel referred to the application filed alongwith the present appeal i.e. CM-15593-C-2019 for placing on record the mutation order (Annexure A-1) dated 1964 B.K. as Ex.A1 and mutation order Annexure A-2 dated 18.06.1961 as Ex.A2 as additional evidence.

13. Relevant part of the pleadings in the application is reproduced hereunder:

' Application under order 41 rule 27 of Civil Procedure Code 1908 for placing on record the mutation order Annexure A-1 dated 1964 B.K as Ex. A1 and mutation order Annexure A-2 dated 18.06.1961 as ExA2 as additional evidence Respectfully Showeth

1. That the Appellant is filing the accompanying regular second appealThe grounds of the appeal may be read as part of this application.

2. That the Annexure A-1 is the mutation order dated 30 Bhadon 1964B.K (1907AD) vide which on the death of Hari Singh great grandfather of the appellant the mutation of the suit land was sanctioned in the favour of Rattan Singh grandfather of the appellant and Arjun Singh paternal grandfather of appellant

3. That the Annexure A-2 is the mutation order dated 18.06.1961 vide which on the death of Arjun Singh paternal grandfather of appellant mutation of his share of land was sanctioned in favour of father of appellant and his brothers.

4. That the both annexure A-1 and A-2 are mutation orders and are part of revenue record and are per se admissible in evidence.

5. That both the orders were part of old revenue record and were not easily traceable at the time of evidence in the trial courtThe appellant could

not produce these orders in the trial court despite exercising due diligence. Now with the great effort the appellant is able to trace these documents.

6. That both the orders are necessary to prove the coparcenary nature of the suit property and are essential for the court to arrive at just decision of the case.

7. That both the documents are the orders of competent revenue authorities and their certified copies are per se admissible in evidence. No oral evidence is required to prove these documents

It is therefore respectfully prayed that the present application be allowed and the mutation order Annexure A-1 dated 30 Bhadon 1964 B.K(1907 AD) be taken on record as ExA1 and mutation order Annexure A-2 dated 18.06.1961 be taken on record as ExA2.'

14. This Court is not convinced with the prayer made in the application because there is nothing explained that how said mutation would prove the pleadings raised by the plaintiff in his plaint. Moreover, there is no explanation in the application that the said documents could not be brought on record despite all due diligence on the part of the plaintiff. Thus, finding no substance in the prayer for leading additional evidence, the present application is hereby dismissed.

15. This Court has heard learned counsel for the appellant at length, who failed to point out any illegality, irregularity or perversity from any part of the evidence referred by learned Courts below. Thus, impugned judgment and decree **is worth to be maintained.**

Consequently, the appeal stands dismissed.

16. However, there is no need to pass any separate order in the application(s) i.e. CM-15591-C of 2019 and CM-15592-C of 2019, as the main appeal is considered and decided on merits. Thus, application(s), if any, also disposed of.

[SANJAY VASHISTH]
JUDGE

August 02, 2023
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Whether speaking/reasoned	Yes/no
Whether reportable?	Yes/no