

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2909-2013 (O&M)
Reserved on:- 19.09.2022
Date of decision: 05.01.2023

JARNAIL SINGH (DECEASED) THROUGH LRS
AND OTHERS

..Appellants

Versus

MAJOR SINGH AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwaljit Singh, Sr. Advocate,
with Ms. Shazia K. Singh, Advocate
for the appellants.

Mr. Ashok Singla, Advocate
Mr. Ankush Singla, Advocate
for respondent No.1.

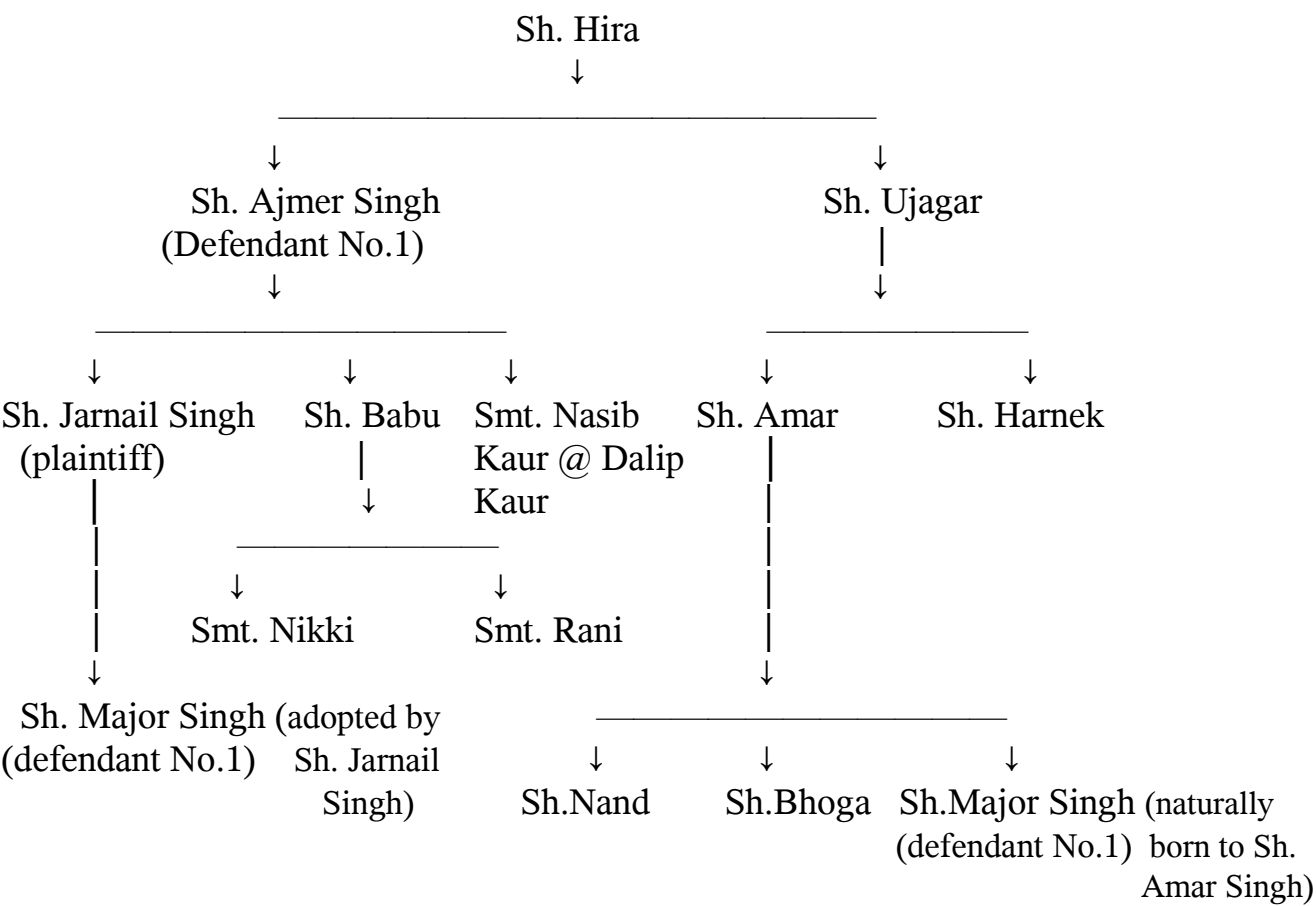
ANIL KSHETARPAL, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs Vs. Chandrika and others, (2016) 6 SCC 157.**

2. The plaintiffs have preferred this second appeal against the judgment and decree passed by the First Appellate Court which, in turn has reversed the judgment and decree passed by the trial Court.

3. The relevant facts, in brief, are required to be noticed, which are as follows:

4. The suit was filed by Sh. Jarnail Singh and Sh. Babu Singh, sons of late Sh. Ajmer Singh for grant of decree of declaration with a consequential relief of possession and for permanent injunction. In order to understand *inter se* relationship between the parties, it would be appropriate to draw a small pedigree of the family:-



4. The plaintiffs, while filing the suit, impleaded Sh. Ajmer Singh, (their father) as defendant No.1, whereas, Sh. Major Singh (his son adopted from his paternal uncle's son Sh. Amar Singh) was impleaded as defendant No.2. Claiming that they are owners of 1/3rd share each in land measuring 62 bighas and 7 biswas, the plaintiffs sought a decree of declaration to the effect that the judgment and decree passed on 06.09.1997 in Civil Suit No.97, is collusive and a result of fraud. It is the case of the plaintiffs that the property is a joint Hindu family coparcenary property which is ancestral in nature and they came to know of the judgment and decree dated 06.09.1997 in the first week of April, 2002. The aforesaid judgment and

decree was passed in favour of Sh. Major Singh and against late Sh. Ajmer Singh. It is claimed by the plaintiffs that the aforesaid judgment and decree is a result of fraud and misrepresentation by late Sh. Ajmer Singh.

5. While practically admitting the plaintiffs' case, Defendant No.1 (late Sh. Ajmer Singh) filed a written statement. He stated that defendant No.2 played fraud with him and the suit property was, in fact, a coparcenary property. Defendant No.2, while contesting the suit, stated that he was adopted by Sh. Jarnail Singh (plaintiff No.2) and the property is neither joint Hindu family coparcenary property nor ancestral in nature. In fact, in the family settlement, defendant No.1 (late Sh. Ajmer Singh) conceded the fact that defendant No.2 is the owner in possession of the property. The judgment and decree dated 06.09.1997 was passed acknowledging the aforesaid family settlement.

6. On appreciation of the pleadings, the trial Court culled out the following issues:-

- “1. Whether the plaintiffs are entitled to declaration as prayed for? OPP*
- 2. Whether the property in dispute is joint Hindu family ancestral and coparcenaries property? OPP*
- 3. Whether the plaintiffs are owner of the property to the extent of 1/3 share since the date of their birth? OPP*
- 4. Whether the collusive decree in Civil Suit No.97 of 2.5.97 decided on 6.9.97 is illegal null and void and liable to be set aside? OPP*
- 5. Whether the plaintiffs are entitled to get possession of 1/3 share of the property? OPP*
- 6. Whether the plaintiffs have no locus-standi to file the present suit (defendant No.2)? OPP*
- 7. Whether the suit is bad for non-joinder of necessary parties? OPP*
- 8. Whether suit is not withing limitation? OPP*
- 9. Whether suit filed by plaintiff just to harass the defendants? OPP*
- 10. Relief.”*

7. After appreciating the evidence, the trial Court decreed the suit

while observing that Sh. Major Singh is estopped from claiming that the property is not joint Hindu family coparcenary property as in the previous civil suit, Sh. Major Singh, has himself, pleaded those facts. The Court held that the adoption of Sh. Major Singh by Sh. Jarnail Singh is not proved and therefore, the judgment and decree suffered by Sh. Ajmer Singh in favour of Sh. Major Singh, who was not a coparcener, is non est in the eyes of law.

8. However, the First Appellate Court held that the property in dispute is neither proved to be joint Hindu Family coparcenary property nor ancestral property. Thus, the plaintiff had no locus standi to file the suit during the lifetime of their father late Sh. Ajmer Singh who died on 31.12.2004. The Court further held that the suit filed by the plaintiffs was barred by limitation as it will be governed by Article 59 and not by Article 65 of the Schedule attached to the Limitation Act, 1963.

9. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook and also the synopsis filed by the learned counsel representing the parties.

10. The learned counsel representing the appellants submits that the defendants has failed to prove that Sh. Jarnail Singh ever adopted Sh. Major Singh. He submits that Article 65 of the schedule attached to the Limitation Act, 1963 would be applicable as the judgment and decree is the result of fraud. While elaborating his arguments, he submits that unless the judgment and decree is registered under the Registration Act, 1908, the same would not result in the transfer of property. He submits any trial, proceedings and consequential judgment is vitiated by fraud and the limitation will start from the date of knowledge of any such decree obtained by fraud which, in the present case, is the first week of April, 1982, hence, the suit cannot be said

to be barred by time.

11. On the other hand, the learned counsel representing the respondent submits that the present suit has been filed at the behest of late Sh. Ajmer Singh, who, after having suffered the judgment and decree in an earlier suit, has got this suit filed through his sons. He submits that it is proved that late Sh. Ajmer Singh, Sh. Jarnail Singh and Sh. Babu Singh were residing together, therefore, in such a situation, the burden was on the plaintiffs to prove that they had no knowledge of the decree. They have failed to discharge the burden particularly when pursuant to the decree dated 06.09.1997, mutation No.8578 was sanctioned in favour of Sh. Major Singh, in the proceedings, whereof, late Sh. Ajmer Singh had participated. Moreover, the mutation was entered on 27.09.1997 in the presence of Sh. Ajmer Singh.

12. After having analysed the arguments of the learned counsel representing the parties, this Court now proceeds to examine the record.

13. Ex.P-1 is the plaint of Civil Suit No.97 of 02.05.1997. Sh. Major Singh filed a suit claiming that he is the adopted son of Sh. Jarnail Singh and in a family settlement, late Sh. Ajmer Singh has acknowledged Sh. Major Singh to be the owner of the property. The suit was instituted on 02.05.1997. From a perusal of the order dated 02.05.1997 (Ex.P-9), it is evident that the Court issued notice of the suit for 29.05.1997. Sh. Ajmer Singh appeared in the Court on 29.05.1997 through Sh. Pawarjit Singh, Advocate and filed his written statement admitting the claim of the plaintiffs. The written statement filed by Sh. Ajmer Singh is Ex.P-4, whereas, the vakalatnama executed by Sh. Ajmer Singh in favour of Sh. Pawarjit Singh is Ex.P-3. Thereafter, the case was adjourned by the Court to

30.07.1997. Sh. Jarnail Singh appeared in the Court on 30.07.1997 and suffered a statement conceding the claim of the plaintiffs. Thereafter, the case was adjourned to 06.09.1997, on which date, in the presence of the learned counsel representing the parties, the judgment and decree was passed. From the facts noticed above, it is evident that Sh. Ajmer Singh had admitted that Sh. Major Singh has been adopted by his son Sh. Jarnail Singh and in a family settlement, Sh. Ajmer Singh has acknowledged Sh. Major Singh to be the owner of the suit property. It is also proved that in the year 1997 itself, the entry of the property, on the basis of the judgment and decree, was made in favour of Sh. Major Singh in the revenue record.

14. Sh. Ajmer Singh never challenged the correctness of the aforesaid judgment and decree by filing a suit on the ground of fraud. He never sought its annulment within the period prescribed. Eventually, he got the suit filed through his children. It has come on record that at that time, his two sons Sh. Jarnail Singh and Sh. Babu Singh did not have any naturally born male child. Sh. Babu Singh was blessed with two daughters, whereas, Sh. Jarnail Singh was blessed with three daughters. It has also come on record that the property was inherited by Sh. Ajmer Singh from Smt. Geoni, his step-mother. Sh. Hira had two wives namely Smt. Geoni and Smt. Pratapo. The property was inherited by Sh. Ajmer Singh and Sh. Babu Singh vide mutation Ex.P-19 from Smt. Geoni. The translation of the mutation is Ex.P-20.

15. In order to prove the adoption, Sh. Major Singh has examined various witnesses including his father from natural birth Sh. Amar Singh. It has been proved on the file that Sh. Amar Singh executed a transfer deed dated 06.03.2007 in favour of his two other sons namely Sh. Nand Singh and

Sh. Bhoga Singh but Sh. Major Singh never received any property from Sh. Amar Singh. It has also come in evidence that Sh. Ajmer Singh and Sh. Jarnail Singh had performed the marriage of Sh. Major Singh. Defendants have placed on record photographs Ex.D-1, Ex.D-3, Ex.D-5, Ex.D-7, Ex.D-9, Ex.D-11, Ex.D-15 and Ex.D-17. From a perusal of Ex.D-3, it is evident that Sh. Ajmer Singh is blessing the groom, whereas, Ex.D-7, Ex.D-9 and Ex.D-13 proves that Sh. Jarnail Singh is blessing Sh. Major Singh and his wife (the newly wedded couple). The trial Court has erred in recording a finding that since Sh. Ajmer Singh and Sh. Jarnail Singh are relatives, therefore, from the photographs, it is not proved that Sh. Jarnail Singh had adopted Sh. Major Singh. In fact, there are various factors which proves that Sh. Major Singh was adopted by Sh. Jarnail Singh. Even the ration card (Mark A) proves that Sh. Major Singh is recorded as the son of Sh. Jarnail Singh.

16. Though the learned counsel representing the appellant has tried to impress upon the Court that the suit was governed by Article 65 of the Schedule attached to the Limitation Act, 1963, however, this Court does not find any substance therein. There is a judgment and decree passed by the Competent Authority on 06.09.1997. Unless the aforesaid decree is set aside or declared non est in the eyes of law, the plaintiffs cannot maintain the suit for possession. In such circumstances, the suit will be governed by Article 59 of the Schedule to the Limitation Act, 1963, which provides that the period of limitation will be three years from the date on which the decree first becomes known to the plaintiffs. The plaintiffs have failed to prove that they had no knowledge of the judgment and decree in the year 1997, 1998 and 1999.

17. Moreover, the First Appellate Court has correctly held that since the property in dispute was not proved to be a joint Hindu family coparcenary or ancestral property, therefore, the plaintiffs had no locus standi to file the suit during the lifetime of their father.

18. In this suit, the plaintiffs claim that the earlier judgment and decree was a result of fraud, however, it is evident that the plaintiffs failed to prove this fact. It has come in evidence that Sh. Ajmer Singh appeared in the Court on 29.05.1997 and filed a written statement admitting the claim of the plaintiffs. Thereafter, he appeared on 30.07.1997 and suffered a statement to the same effect. While filing the written statement in this suit, Sh. Ajmer Singh claimed that the aforesaid statement was recorded on account of misrepresentation by Sh. Amar Singh. However, no cogent evidence to this effect has been brought on record. The judgment and decree passed by a Court is considered sacrosanct unless proved otherwise. The record of a judicial proceeding is presumed to be true and genuine in view of Section 80 of the Indian Evidence Act, 1872. Further, as per Section 114, Illustration (e) of the said Act, the Court may presume that the judicial acts have been regularly performed. In such circumstances, there is no evidence to prove that Sh. Major Singh played fraud upon the Court.

19. Further, in the judgment and decree dated 06.09.1997, Sh. Jarnail Singh admitted the claim of Sh. Major Singh. The aforesaid decree is passed on acknowledging the family settlement. The trial Court has wrongly held that Sh. Major Singh is not proved to be the adopted son and therefore, he was not a member of the family. It is evident that Sh. Major Singh, even in the absence of the fact of adoption, is the grand-child of the brother of Sh. Ajmer Singh. Hence, he was a member of a joint family. While interpreting

a family settlement, the expression “member of the family” is required to be given a wider meaning. In numerous judgments, the Courts have shown an inclination towards upholding the family settlements instead of disregarding them on narrow grounds.

20. Reliance in this regard can be placed on **Ram Charan Das Vs. girja Nandini Devi and others, AIR 1966 (SC) 323 and Krishna Beharilal (dead) by his legal representatives Vs. Gulabchand and others, AIR (1971) 1 SCC 837.**

21. Keeping in view the aforesaid discussion, finding no merit, the appeal is dismissed.

22. All the pending miscellaneous applications, if any, are also disposed of.

05th January, 2023

Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No