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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: April 20, 2023

Raghbir and others

....Appellants

versus

Om Parkash and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. D.K. Tuteja, Advocate for appellants.

ARUN MONGA, J. (ORAL)**CM-3701-C-2023**

For the reasons stated in application, same is allowed subject to all just exceptions. Main appeal, which was dismissed for non-prosecution vide order dated 02.03.2023, is restored to its original number. Same is taken on Board for hearing today itself. Registry to do the needful.

CM-3826-C-2017

For the reasons stated in application, same is allowed subject to all just exceptions. Delay of 337 days in re-filing appeal is condoned.

Main case (O&M)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, appellants/ plaintiffs No.1, 2 and 4(b) are in second appeal before this Court assailing learned trial Court judgment and decree dated 16.10.2014, as upheld by learned First Appellate Court vide its judgment and decree dated 30.09.2015, dismissing the suit of plaintiff-respondent for declaration with consequential relief of permanent injunction.

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3. The dispute herein pertains to the estate of one Turti son of Amin Lal, who died issueless. He had two brothers namely Jagan and Bhagwana. The former had predeceased Turti. The plaintiffs are the heirs/successors-in-interest of Turti's predeceased brother Jagan, whereas the defendants are the heirs/successors-in-interest of his brother Bhagwana (deceased). Plaintiffs claim that the estate of Jagan had been divided in equal shares between the heirs of his predeceased brother Jagan and those of his brother Bhagwana. The plaintiffs had filed suit for declaration of their title to share in the suit property and for permanent injunction against the defendants.

4. Upon notice, appellant-defendants contested the suit raising preliminary objections *qua* maintainability, time barred, no cause of action and Court fee etc.

4.1. On merits, it was averred that no arrangement was made by Turti regarding his property in his life time. Turti died issueless and was succeeded by his brother Bhagwana and legal heirs of Jagan had never inherited the property of Turti. Further averred that para no.4 of the plaint was correct to the extent that Turti was owner in possession of the land in question, but it was denied that predecessor-in-interest of plaintiffs inherited proprietary rights of said Turti to the extent of half share of the said agricultural land. The share of Turti was inherited by his brother Bhagwana. It was denied that predecessor-in-interest of plaintiffs became joint owner in possession of the land to the extent of $\frac{2}{3}$ share of village Kabulpur and $\frac{1}{4}$ share of village Matana. It was further averred that mutations were rightly and legally sanctioned in favour of grand-father of defendants namely Bhagwana. The mutations were legal and valid and not fraudulent and plaintiffs were bound by the same. Turti died issueless and his entire share was inherited by his brother Bhagwana because Jagan had already died. No fraudulent act was committed by the grand-father of the defendants in collusion with revenue

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officials. In fact, the property was rightly and legally transferred in his favour because it was only he, who inherited the property of Turti after his death. Only Bhagwana succeeded Turti being alive brother and legal heirs of other brother, who had already died never inherited any share. Also averred that mutation was rightly and legally sanctioned and was binding upon all. Rest of the averments were denied and dismissal of the suit with costs, was prayed for.

4.2. Replication to written statement was filed controverting pleas and re-affirming contents of plaint.

5. Based on the rival pleadings, following issues were framed:

- “(1) *Whether the plaintiffs are entitled to declaration to the effect that they are joint owners in possession of the agricultural land to the extent of 3/4 share, as prayed for? OPP.*
- (2) *Whether the plaintiffs are entitled to declaration that mutation no. 1389 dated 1.6.1962 comprised in Rect. & Killa No. 24/18 (8-0), 32/5/2/1 (0-14) total measuring 8 Kanals 14 marlas situated at village Kabulpur District Rohtak, is illegal, null and void?OPP*
- (3) *Whether the plaintiffs are entitled to declaration to the effect that they are joint owners in possession of the agricultural land to the extent of 1/4th share comprised in Rect. & Killa No.25/9/1 (6-16)12/1(2-18) total measuring 9 Kanals 14 Marlas and also 1/4th share comprised in Rect. & Killa No.25/9/2(1-4) 10 (7-12) total measuring 8 Kanal 16 Marla situated at Matana District Rohtak? OPP*
- (4) *Whether the plaintiffs are entitled to permanent injunction restraining the defendants from forcibly dispossessing the plaintiffs and from alienating the suit property, as prayed for?OPP*
- (5) *Whether the suit of the plaintiffs is not legally maintainable in the present form?OPD*
- (6) *Whether the plaintiffs have no cause of action and locus stand to file the present suit?OPD*
- (7) *Whether the suit is barred by limitation?OPD*
- (8) *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

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7. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issues No.1 to 6 against appellants-plaintiffs. Consequently, learned trial Court dismissed the suit of plaintiffs.

8. Feeling aggrieved against the said judgment and decree dated 16.10.2014, appellants-plaintiffs preferred first appeal.

9. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

10. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“15. The appellants-plaintiffs have claimed declaration to the effect that they are joint owners in possession of the suit property on the basis of oral family arrangement made by Turti son of Ami Lal, who had died issueless and have further asked for permanent injunction directing the defendants not to interfere in the peaceful possession of the appellants-plaintiffs. The onus was upon the appellants-plaintiffs to prove that Turti son of Ami Lal in his life time had made oral family arrangement of his properties situated at Village Kabulpur and Matana, Tehsil and District Rohtak and as per said arrangement the property was to be divided actually between the legal heirs of his brother Jagan (predecessor of plaintiffs-appellants) and another brother Bhagwana (predecessor of defendants-respondents). To prove the said contentions, the plaintiffs have examined nine witnesses and certain documents were tendered in evidence. Ram Kishan appeared as PW1 has deposed that Turti was unmarried and died issueless. He has admitted that Jagan had expired earlier and then Turti had expired and later on Bhagwana had died. He has further deposed that Ami Lal, father of Turti had three sons and had no daughter and the wife of Amit Lal had expired before the death of Turti and Jagan. The witness has further deposed that Turti son of Ami Lal never executed any family arrangement nor had executed any sale deed during his life time and the family arrangement had taken place after 2-3 years of the death of Turti. PW2 Manphool had also admitted the factum of death of Jagan, who was the predecessor of appellants-plaintiffs before the death of his brother Turti, who had died issueless. PW4 Krishan has deposed the same facts and had admitted that the family settlement which is mentioned in his examination-in-chief is hearsay fact and no such settlement had effected in his presence. PW6 Sher Singh, Retired Patwari had proved Ex.P9, Ex.P10, Ex.P11, Ex.P12 and Ex.P13 which are translated documents of Ex.P1, Ex.P4, Ex.P5, Ex.P6 and Ex.P7 which are in Urdu language. PW7 Krishan Kumar has deposed that family arrangement was done during the life time of Turti. In the cross-examination, he has admitted that no partition had taken place of the land in ownership of Turti in his presence. So, from the perusal

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of the evidence on record produced by the plaintiffs-appellants, it can be said that there is no cogent independent corroboration to the case of the plaintiffs- appellants. Even PW1 produced by the plaintiffs has admitted that no family arrangement or will has been executed during the life time of Turti and the same has taken place after 2-3 years of death of Turti. Other witness PW4 Krishan has stated that no family arrangement was effected in his presence and it was only hearsay as stated by him in his examination in chief. PW3 Raghbir has stated that the partition of land of Turti was never executed in his presence. So, the factum of family arrangement by Turti son of Ami Lal is not proved by the plaintiffs. Further from the evidence on record it is also admitted fact that Jagan predecessor of plaintiffs appellant had expired earlier then Turti son of Ami Lal and so at the time of death of Turti son of Ami Lal, who had died issueless only legal heir available is class-II was Bhagwana, predecessor of defendants-respondents, As per Section 9 of Hindu Succession Act the preference is to be given to the legal heirs who are in first entry, then in the second entry, then in the third entry and so on in succession. Further, Section 8(b) of the Hindu Succession Act, 1956 (sic 1856) mandates that if there is no heir of class-I category, then the property shall devolve upon heir specific in class-II in the Schedule. It is also admitted fact on record that Bhagwana, predecessor of defendants was alive at the time of death of Turti son of Ami Lal and so being real brother of Turti and further no class-I heir was alive, Bhagwana, predecessor of defendants-respondents being only class-II legal heir in the second entry was preferred upon the predecessor of appellants being in class – III entry of class – II legal heir and on that basis said mutations No.1389 dated 1.6.1962 of village Kabulpur and mutation No.1040 dated 20.3.1963 of Village Matana was entered and got sanctioned in their name.

16. *The contention of learned counsel for the appellants that they were neither served of any notice before sanctioning of mutations No.1389 dated 1.6.1962 of village Kabulpur and mutation No.1040 dated 20.3.1963 of Village Matana, is against the principle of natural justice, are devoid of merits as from the perusal of Ex.P9, it is evident that the said mutations were got sanctioned when the same were announced in Jalsa-eaam in the presence of people of village and Numberdar and the same was verified and then Ex.P9 mutation No.1389 dated 1.6.1962 and Ex.P10 mutation No.1040 dated 20.3.1963 were sanctioned. In Ex.P10 mutation No1040 dated 20.3.1963, in Column No.15, there is also mentioning of Rapat No.202 which was got entered before sanctioning mutation Ex.P10 and also pedigree table is mentioned on it stating that Turti being the only legal heir inherited the property of Turti.*

17. *The next contention of learned counsel for the appellant that mutations Ex.P9 and Ex.P10 were wrongly entered as they were also legal heirs of Turti son of Ami Lal the property being ancestral and joint property. The contention raised by learned counsel for the appellants are devoid of merits as they are beyond pleadings. It is further necessary to mentioned here that application under Order 6 Rule 17 CPC for amendment of the plaint was dismissed by this Court vide order of same date. Further, learned counsel for the respondents-defendants has relied upon judgment of Hon'ble High Court in case*

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titled Sheela Devi Vs. Lal Chand, 2006(1) LJR 764, wherein it is held that if one of the brothers died issueless, the property in the hands of pre-deceased brother in his self acquired property then it would not form part of the Hindu coparcenary, ancestral property and only surviving brothers are entitled to inherit the property of deceased. So in view of the above it is further observed that since predecessor of appellant Jagan had died earlier than Turti. So Bhagwana being real brother of Turti was only legal heir left at the time when succession open. In view of the above discussion it is observed that the appellants could not prove their joint ownership as they could not prove any oral family arrangement took place by which their ancestors got share in the property of Turti as there is no cogent independent corroboration to the case of the appellants-plaintiffs. In these circumstances, this Court is of the considered opinion that the plaintiffs-appellants have failed to prove their case by leading satisfactory and reliable evidence.

16. *Thus, as a consequence of the above discussion, this Court is of considered opinion that there is no illegality, irregularity or infirmity in the finding arrived at by learned lower court pertaining to issues No.1 to 4. Thus, the findings given by learned Lower Court are hereby affirmed.*

17. *Since nothing has been assailed by any of the counsel for the parties, regarding findings of learned lower court on issues No.5, 6 and 7, so the same are also affirmed.*

18. *Keeping in view the totality of facts and circumstances of the case and the above said discussions, the findings of learned Lower Court are hereby affirmed. Consequently, the appeal is hereby dismissed with costs. Decree-sheet be prepared accordingly. Lower Court record be sent back along with one copy of this judgment. Appeal file be consigned to the record room."*

11. Learned counsel for appellant would contend that learned Courts below ignored vital documents (Annexure A-1 and A-2) which had gone a long way to establish the claim of the plaintiffs that land of Turti was divided between the legal heirs of Jagan i.e., Nihali Sarti, Harsukh and Girdhari to the extent of ½ share and Bhagwana to the extent of ½ share and the same were duly shown in these two documents (Annexure A-1 and A-2), but names of Nihali, Sarti, Harsukh and Girdhari children of Jagan was deleted, though the same had been correctly recorded by the Patwari and Girdawar concerned in favour of the persons mentioned in Para No.9 of the said Mutation (Annexure A-1). Said process of deletion of names of above said four persons is *per se* illegal and in contravention of the law. He would also contend that Courts below did not consider the fact that

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contesting defendant/respondent No.1-Om Prakash had instituted a suit wherein the plaintiff and the co-plaintiffs were shown as co-owner in joint possession of a part of the suit property. He would further contend that no death certificate showing the date of death of Jagan was placed on the record and as such on the basis of surmises and conjectures, learned Courts below came to the conclusion that Jagan died before Bhagwana.

12. Further the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record.

13. Having perused the impugned judgments, my considered opinion is that the same submissions made before learned Courts below were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were correctly recorded by giving sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

14. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

15. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

16. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

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17. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

18. Pending application(s), if any, shall also stand disposed of.

19. No order as to costs.

(ARUN MONGA)
JUDGE

April 20, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No