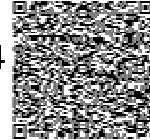


2024:PHHC:134054



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

RSA-3106-2019 (O&M)
Reserved on : 26.09.2024
Pronounced on : 15.10.2024

Suresh Bandhu Chanana & Anr.

....Appellants

VERSUS

Smt. Sudershan Bhatia & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.K.S. Bedi, Advocate for the appellants.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellants aggrieved by the judgment and decree dated 21.11.2014 passed by the Trial Court and the judgment and decree dated 21.09.2018 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are that the plaintiff filed a suit for declaration to the effect that she is joint owner in possession to the extent of 1/4th share in land measuring 317 kanal 13 marla situated at village Lohar Ragho, Tehsil Narnaund, District Hisar along with defendant Nos.1 and 2 and her deceased mother Smt. Sita Bai being ancestral property in the hands of their predecessor-in-interest namely Amar Nath son of Godha Ram who died interstate on 30.03.1978 and all transfers of any share of the said land by Amar Nath in favour of his wife Smt. Sita Bai or by them in favour of defendants no.3 to 16A(i, ii, iii) are not binding and operative upon the 1/4th right of the plaintiff in the suit land and all the subsequent decrees/transfers/sale deeds are totally wrong, illegal and are liable to be set

aside. Further relief of permanent injunction was also sought. The case set up was that the suit land was owned and possessed by Amar Nath, the father of the plaintiff and defendant Nos.1 and 2, who inherited it from his father Godha Ram and therefore the suit land was ancestral Joint Hindu Family property in the hands of Amar Nath and the plaintiff and defendant Nos.1 and 2 along with their mother Smt. Sita Bai had a vested right to succeed to the suit land to the extent of 1/4th. On the death of Amar Nath on 30.03.1978 the suit land was inherited by the plaintiff, defendant Nos.1 and 2 and their mother Smt. Sita Bai in equal shares. It was averred that the plaintiff had settled at Ambala Cantt. after her marriage and she remained under a bonafide belief that she will get her 1/4th share in the suit land after the death of her mother Smt. Sita Bai. However, after the death of Smt. Sita Bai on 27.11.2005 it was revealed to the plaintiff by defendant Nos.1 to 3 that she was entitled to only a few kanals of land and that there had been several decrees and sale deeds by them and their deceased mother Smt. Sita Bai in favour of different persons. As per the plaintiff her signatures on the sale deeds had either been forged or the same had been executed through somebody other than the plaintiff. The collusive decrees suffered by Smt. Sita Bai in favour of defendant Nos.1 to 3 were stated to be not binding and operative upon the rights of the plaintiff qua her 1/4th share in the suit land and were liable to be set aside. Hence, the suit for declaration and permanent injunction. In their written statement defendant Nos.1 and 3 raised preliminary objections of maintainability, cause of action, locus-standi, suppression of true and material facts, estoppel, non-joinder and mis-joinder

of necessary parties etc. It was submitted that Amar Nath had transferred 1/2 share in the suit land in favour of his wife Smt. Sita Bai by way of a decree dated 03.12.1969 which decree was never challenged by anyone and now the plaintiff could not question the same. Smt. Sita Bai had thereafter suffered decrees in favour of her daughter (defendant No.1) and grand-daughter (defendant No.3) in 1985 and 1989 and the same could not be challenged now by the plaintiff. It was denied that the suit land was co-parcenary property in the hands of Amar Nath or that the plaintiff, defendant Nos.1 and 3 and Smt. Sita Bai were entitled to 1/4th share each. The vendees i.e. defendant Nos.4, 5, 6, 8, 9, 10, 11, 12, 14, 15 and 16 filed a separate joint written statement contending that the plaintiff, defendant Nos.1 and 3 and Smt. Sita Bai had sold their shares vide different registered sale deeds on the basis of which mutations had also been sanctioned. Defendant Nos.4A to C, 5-6(a), 16(A, B, C) filed a written statement on similar lines.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for the relief of declaration as prayed for ? OPP
2. Whether the plaintiff has no locus-standi and cause of action to file the present suit ? OPD
3. Whether the suit of the plaintiff is not maintainable in its present form ? OPD
4. Whether the plaintiff is estopped to file the present suit by his own act and conduct ? OPD

5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
7. Relief.

4. The Trial Court vide judgment and decree dated 21.11.2014 dismissed the suit of the plaintiff. Aggrieved by the same an appeal was filed by the plaintiff which appeal was dismissed by the First Appellate Court vide judgment and decree dated 21.09.2018. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellants would contend that the suit land was ancestral and hence the plaintiff-appellants had a right by birth. Learned counsel would further contend that the documents on the record prove that the suit land was ancestral in the hands of Amar Nath and that he could not have given the suit land by way of a collusive decree to his wife Smt. Sita Bai. It is urged that the suit land being was ancestral property, Smt. Sita Bai was not competent to suffer collusive decrees in favour of any person or execute any sale deeds in favour of any person.

6. Heard

7. In the present case the sole argument raised by the learned counsel for plaintiff-appellants is that the suit land was ancestral in nature. However, this plea of the plaintiff-appellants is not substantiated by any reliable and cogent evidence on the record. The Trial Court held that "*The other contention of the plaintiff that Smt. Sita Bai was not required to sell*

the suit land as there was no necessity to sell the suit land and the suit land was ancestral property is not tenable because the suit land was not ancestral property. Plaintiff has not placed any document on record to prove that the suit land was ancestral property". In appeal the First Appellate Court found that *"As regard the case of the plaintiff/appellant that she is entitled for 1/4th share in the suit land as the same was ancestral property and Smt. Sita Bai was not legally competent to suffer collusive decrees in favour of any person and to execute the sale deed of suit land in favour of any person, to prove the same, firstly it is to be seen whether actually the suit land was ancestral property. Though the plaintiff has taken the aforesaid plea regarding nature of suit land as ancestral property but to prove the same, she has not produced on record any cogent and convincing evidence".* The plea regarding fraud was also negated by both the Courts and even before this Court learned counsel for the plaintiff-appellants has not been able to make out a case to differ with the findings recorded by both the Courts.

8. Section 6(1) of the Hindu Succession Act, 1956 as substituted by Act 39 of 2005 (hereinafter referred to as the Act) reads as under :

"Section 6 : Devolution of interest in co-parcenary property

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,

(a) by birth become a coparcener in her own right the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004."

9. The amendment to Section 6(1) of the Act was dealt with by the Hon'ble Supreme Court in the case of **Vineeta Sharma V/s Rakesh Sharma & Ors. [2020 (3) RCR Civil 473]**. Their Lordships held as under :

"55. The amended provisions of section 6(1) provide that on and from the commencement of the Amendment Act, the daughter is conferred the right. Section 6(1)(a) makes daughter by birth a coparcener "in her own right" and "in the same manner as the son." Section 6(1)(a) contains the concept of the unobstructed

heritage of Mitakshara coparcenary, which is by virtue of birth. Section 6(1)(b) confers the same rights in the coparcenary property "as she would have had if she had been a son". The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth. Though the rights can be claimed, w.e.f. 9.9.2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20.12.2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated.

56. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backward and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively.

It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended section 6, since the right is given by birth, that is an antecedent event, and the provisions operate concerning claiming rights on and from the date of Amendment Act.”

A reading of the above reproduced paragraphs in the case of **Vineeta Sharma** (supra) would clearly reveal that the provisions of Section 6 of the Act were held to be retroactive and that by virtue of the proviso any alienation made prior to 20.12.2004, i.e the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated.

10. The plaintiff-appellants have not been able to prove that there was any fraud played at the time of the passing of the decrees in favour of Smt. Sita Bai. In the absence of any fraud having being played, the power of Smt. Sita Bai to alienate the suit land could not be challenged as the property in her hands would be treated as her own separate property. Though post the amendment of 2005 to Section 6 of the Hindu Succession Act, daughters have been given an equal right and are treated as co-parcenary, however, in view of the proviso, as held in the case of **Vineeta Sharma** (supra), any alienation made prior thereto cannot be invalidated as the provisions of Section 6 of the Act post the amendment of 2005 have been held to be

retroactive. No other point has been urged or argued by the learned counsel for the plaintiff-appellants.

11. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.10.2024

Ankur

**(ALKA SARIN)
JUDGE**

*NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*