

**AVTAR SINGH (DECEASED) THROUGH LRS
VS
JOGINDER AND OTHERS**

Present: Mr. Sunil Chadha, Sr. Advocate
with Mr. Taanvi Dhull, Advocate
and Mr. Raghav Chadha, Advocate
for the review applicant.

Mr. Amit Kumar Saini, Advocate
for respondent No.1, 3 & 4.

1. A review of the order passed by this Court while disposing of RSA-2074-2008 on 01.10.2021, has been sought after liberty was granted by the Hon'ble Supreme Court in Special Leave Petition (Civil)-Diary No.25019 of 2021, on 19.01.2024, with the following order:-

“Learned counsel appearing for the petitioner(s) submits that his client(s) would not like to proceed with this matter but apply for review of the judgment impugned before the High Court itself.

In the event the review petition is dismissed, it shall be open to the petitioner(s) to approach this Court against the main judgment.

The present petition is dismissed as withdrawn with liberty as prayed for.”

2. Keeping in view the facts of the case, the learned Senior counsel was requested to file a brief note of his submissions, which reads as under:-

“FACTUAL POSITION:

i) Sh. Samund Singh inherited the suit property from his father Sh. Kaula Singh. Sh. Kaula Singh had inherited the suit property from his father Sh. Ladha who in turn had inherited the same from his father Sh. Bigha. Thus the suit property in the hands of Sh. Samund Singh was ancestral property. In this regard, kindly refer to the statement of PW-3 and Exhibits P/2 (Summary Report) and P/18A (Pedigree Table/Family Tree-Kursinama). Exhibit P-15/A is Mutation No. 108 dated 25.08.1937 regarding oral gift of land measuring 128 Bighas 12 Biswas 10 Biswasi by Sh. Samund Singh in favour of his five sons including Joginder Singh.

ii) *Sh. Samund Singh had four sons, namely, Joginder Singh (respondent no. 1), Chanan Singh, Dalip Singh and Bant Singh. Sh. Joginder Singh further had seven sons and four daughters. Out of the said eleven children of Sh. Joginder Singh, three including the appellant/plaintiff Avtar Singh and his two sisters are from his first marriage and remaining eight i.e. six sons and two daughters are from his second marriage. Said six sons of Sh. Joginder Singh from his second marriage are arrayed as respondents/defendants no.2 to 7.*

iii) *Total land which Sh. Samund Singh inherited was 149 Kanals 15 Marlas. Respondents/defendants no. 2 to 7 filed a Civil Suit No. 201 dated 21.10.1994 against their father Sh. Joginder Singh (respondent no.1) seeking declaration that they are the owners in possession in equal shares of suit land measuring **94 Kanals 14 Marlas** (out of aforesaid total land measuring 149 Kanals 15 Marlas) as well as one house. The said civil suit dated 21.10.1994 filed by respondents/defendants no.2 to 7 was decreed vide judgment and decree dated 27.03.1995 on the basis of admission of the claim by respondent no. 1 through his written statement filed to the said civil suit.*

iv) *On coming to know about the aforesaid collusive decree dated 27.03.1995, the appellant/plaintiff filed the present civil suit seeking declaration and permanent injunction as stated above, which suit has been illegally dismissed by both the courts below on the ground that the suit property in the hands of Sh. Joginder Singh came through a gift and a Will and as such, it lost the character of an ancestral property.*

GROUND TO SEEK REVIEW:

i) *In paragraphs no. 4.1 and 5.1 of the Judgment/Order dated 01.10.2021, which is under review, this Hon'ble Court held that since the appellant/plaintiff never questioned the correctness of the transfer of the property via gift by Samund Singh in favour of his four sons in the year 1937, therefore, appellant/plaintiff cannot be permitted to set up a new ground in the present appeal for the first time. In this regard, suffice is to submit that it is not in dispute that vide Mutation No. 108 (Exhibit P-15A), on 24.08.1937, Samund Singh made an oral gift of land measuring 128 Bighas 12 Biswas and 10 Biswasi (149K-15M) in favour of his four sons namely Joginder Singh, Chanan Singh, Dalip Singh and Bant Singh and out of the land which Joginder Singh so inherited of his own and also from his brother Chanan Singh, through a collusive decree dated 27.03.1995, he (Joginder Singh) made his six sons (from his second marriage) owner to the tune of 94K-14M. In this regard, suffice is to submit*

*that firstly as per Section 123 of the Transfer of Property Act, a gift deed has to be a registered document and as such, through the alleged oral gift deed, Samund Singh could not transfer any land in favour of his four sons even if the same was the self-acquired property of Samund Singh, although it is the proven case of the appellant/applicant that it was an ancestral property even in the hands of the Samund Singh. From **06.05.1925**, Sections 54, 107 and 123 of the Transfer of Property Act, 1882 (for short TPA) to all Municipalities in the Punjab and to all notified areas declared and notified under Section 241 of the Punjab Municipal Act, 1911. Even if, this Hon'ble Court holds that the provision of Section 123 of TPA is not applicable in respect of suit land then also in terms of the Registration Act, 1908, transfer of suit land through the oral gift deed cannot be legally recognized, the same being of a value of more than Rs. 100/-.*

ii) In fact, it is the illegal finding of both the Courts below that since through aforesaid Mutation No. 108 (Ex. P-15A), estate of Sh. Samund Singh devolved upon his aforesaid four sons, namely, Sarvshri Joginder Singh, Chanan Singh, Dalip Singh and Bant Singh on the basis of oral gift deed dated 24.08.1937, therefore, the estate so devolved upon Sh. Joginder Singh lost the ancestral character. Similarly, both the Courts below also illegally came to conclude that as per Mutation No. 358 (Exhibit P-8), respondent no. 1 (Sh. Joginder Singh) inherited some property on the basis of a Will from his brother Chanan Singh and as such, even the said property was not the ancestral property in the hands of Sh. Joginder Singh. The said findings of both the Courts below are absolutely contrary to the settled law i.e. an ancestral property can neither be gifted nor willed away and the same has to devolve upon only on the basis of natural succession.

*iii) Since the suit property in the hands of Sh. Joginder Singh was ancestral in nature, as is quite apparent from the summary report (Exhibit P-2), therefore, civil court decree dated 27.03.1995 suffered by Sh. Joginder Singh also had no legal effect on the right/share of the appellant/plaintiff in the suit property. In support of this proposition of law, reliance is being placed upon the judgments rendered by the Hon'ble Supreme Court of India reported as **"Gurdas Ram v. Sukhdevi (2004 (1) RCR (CIVIL) 363)** as well as **'Smt. Gomtibai (dead) through LRs and others v. Mattulal (dead) through LRs'** (AIR 1997 Supreme Court 127).*

iv) *In view of the aforesaid factual as well as legal submissions, neither the alleged gift deed dated 24.08.1937 by Sh. Samund Singh in favour of his four sons could be acted upon in the absence of any written instrument and registration thereof nor the alleged Will executed by Sh. Chanan Singh in favour of Sh. Joginder Singh in respect of an ancestral land could be acted upon.*

v) *The collusive decree dated 27.03.1995 in respect of ancestral land, which respondent no. 1 suffered in favour of respondents no.2 to 7 has no binding force for two reasons, i.e. in the suit filed by the respondents no.2 to 7 against respondent no.1, appellant/plaintiff being one of the co-sharers in the suit property was not impleaded as a party and also for the reason that the said decree was not registered. No evidence/proof has been brought on record to even prima facie show that the said collusive decree had been suffered on the basis of any earlier family settlement/memorandum. In this regard, reliance is being placed upon the judgment rendered by this Hon'ble Court in the case of **Jai Narain Vs. Smt. Sona Devi (2006 (2) CIVIL COURT CASES 99)**. No doubt that respondents/defendants no. 2 to 7 in their written statement alleged that there was a family arrangement between them and respondent-defendant no. 1 by which it was decided that the said suit land will be transferred by respondent-defendant no. 1 in favour respondents/defendants no. 2 to 7 in equal shares to the extent of 94K-14M. However, respondents/defendants no. 2 to 7 never got any mutation entered in their favour in the revenue record regarding the alleged family arrangement, thus, making the veracity of such claim absolutely feeble and non-reliable. In the Judgment/Order dated 01.10.2021 under review, no discussion/finding as such has been rendered in respect of issue no. 2 i.e. whether decree dated 27.03.1995 in favour of defendants no. 2 to 7 is null and void, if so its effect. In this regard, suffice is to state that defendants no. 2 to 7 are the six sons of S. Joginder Singh from his second wife whereas the appellant/applicant is the son of S. Joginder Singh from his first wife. It is only in order to deprive the appellant/applicant (S. Avtar Singh) from any property/share that the said collusive decree dated 27.03.1995 came to be executed. Since the said decree had not been registered, therefore, the same has no value in the eyes of law and ought to have held to be null and void.*

vi) *It is a settled proposition of law that if self-acquired and ancestral property are mixed and inseparable then the entire property becomes ancestral property.*

vii) *The moot point in the present case is regarding the fact as to whether the suit property is an ancestral property or not. It is pertinent to note that it is the specific stand of respondents-defendants 1 to 4, 6 & 7 in paragraphs no. 5 & 6 of their written statement (**Page 18 of the L.C.R.**) that the above-said suit property is not ancestral in nature as it got devolved upon the defendant/respondent no. 1 i.e. Joginder Singh by way of an oral gift deed from his father i.e. Sh. Samund Singh and subsequently the same was mutated vide mutation no. 108 in the year 1937. However, despite the said stand of the respondents-defendants 1 to 4, 6 & 7 that the suit property is not ancestral in nature, respondents/defendants no. 2,5,6,&7, during the pendency of the present Civil Suit No. 128/99, filed a suit bearing Civil Suit No. 42 of 2006 against respondents-defendants no. 1, 3 & 4 to declare them in joint possession of a part of the suit property in dispute to the extent of 55K-1M by terming the same to be a Hindu Family Ancestral Coparcenary Property. In order to prove the same, appellant/plaintiff on 16.02.2006 filed an application for additional evidence to bring on record the above said Civil Suit No. 42 of 2006 and in reply to the above-said application, respondents-defendants admitted the factum of said suit and consequently, the said application was allowed vide the order dated 07.03.2006, and the said civil suit came to be exhibited as EX. P/21 (Page 206 of L.C.R., specifically paragraph no. 4 of the exhibited plaint). In view of the said categorical admission of respondents-defendants no. 2,5,6,&7, clearly goes a long way to show that the suit property is ancestral in nature, thus, by no way contesting defendants no. 2,5,6,&7 can rely on two different stands which acutely contradicts each other. It is further pertinent to note here that both the courts below have completely been oblivious towards the fact that the respondent-defendant no. 5 i.e. Sh. Ajmer Singh in his written statement dated 03.01.2000 has categorically admitted each and every claim of the appellant-plaintiff and in paragraph no. 5 of the said written statement, he has categorically admitted that the respondent-defendant No. 1 has acquired the said suit property by his forefathers and is an ancestral property (Page 15 of L.C.R.).”*

3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

4. Sh. Samund Singh was the common ancestor of the parties. In the year 1937, he orally gifted land measuring 128 bighas, 12 biswas and 10 biswas in favor of his four sons namely Joginder Singh, Sh. Chanan Singh, Sh. Dalip Singh and Sh. Bant Singh, whereas, his fifth son had predeceased him. Subsequently, these four sons of Sh. Samund Singh partitioned the property vide mutation No.440. Sh. Joginder Singh had married twice. From his first wife, the plaintiff (Sh. Avtar Singh) was born, whereas, from his second marriage, he had six sons. During the lifetime of Sh. Joginder Singh, his brother Sh. Chanan Singh died and on the strength of a registered Will dated 28.03.1980, Sh. Joginder Singh, Sh. Dalip Singh and Sh. Bant Singh inherited some property by a registered Will dated 28.03.1980, executed by their brother Sh. Chanan Singh on 27.03.1995 and a suit in favor of defendant No.2 to 7 was decreed as Sh. Joginder Singh acknowledged a prior family settlement. On 16.07.1999, Sh. Avtar Singh (plaintiff) filed the suit for grant of decree of declaration that he is in joint possession of suit property measuring 149 kanal and 15 marlas and a house after declaring that judgment and decree dated 27.03.1995, is illegal, null and void. Both the Courts dismissed the suit. The regular second appeal filed by the plaintiff was also dismissed.

5. The submission No.(i) of the review applicant has no substance for the following two reasons:-

- a. The review applicant Sh. Avtar Singh while filing the suit never questioned the correctness of oral gift in the

year 1937. He did not implead Sh. Dalip Singh, Sh. Bant Singh or their heirs of Sh. Samund Singh as party to the suit.

b. It is the case of the learned Senior counsel that from 06.05.1925, Sections 54, 107 and 123 of the Transfer of Property Act, 1882 (hereinafter referred to as the 1882 Act'), were extended to all Municipalities in Punjab and to all notified areas declared and notified under Section 241 of the Punjab Municipal Act, 1911 (hereinafter referred to as the '1911 Act'). Admittedly, the suit property is located in village Mandiala Khurd, Tehsil Samrala, District, Ludhiana. It is not the review applicant's case that the property was located in the area of the municipalities or all notified areas declared and notified under Section 241 of the 1911 Act.

6. With respect to submission No.(ii), (iii) & (iv) it may be noted here that the review applicant was required to prove that the property was ancestral. First of all, it has come on record that the plaintiff has separated from the family and is settled and residing in Ludhiana for the last 30-35 years before the filing of the suit. The review applicant has separate income and expenditure. He had acquired 40 bighas of land and house in village Bekalan, which was subsequently sold by him.

7. Moreover, it has come on record that Sh. Joginder Singh not only received the land by virtue of oral gift from Sh. Samund Singh in the year 1937, but also inherited some property from his brother Sh. Chanan

Singh by virtue of a registered Will dated 28.03.1980. It is well settled that if the ancestral and non-ancestral property is mixed up and it is impossible to identify ancestral property, all the properties shall be considered non-ancestral. Reliance in this regard can be placed on the judgment in **Mara and others versus Mst. Nikko @ Punjab Kaur, AIR 1964 (SC) 21.**

8. This Court has carefully read the judgment passed in **Gurdas Ram's case (supra)**. This judgment is passed by a Single Bench of this Court and not by the Supreme Court. It is with respect to a co-parcenary property, whereas, it is the case of the plaintiff that the property is ancestral. **Smt. Gontibai's case (supra)**, is arising from Hyderabad. It is with respect to requirement of registration of gift. Section 123 of the 1882 Act was not extended to the entire area of Punjab before 01.01.1955. Hence, with greatest respect, the aforesaid judgment will not be applicable.

9. With respect to submission No.(v), (vi) & (vii), it may be noted that the plaintiff has not made any attempt to identify the properties which were received by Sh. Joginder Singh from two different sources, which have been elaborated. Thus, the entire property is considered non-ancestral. Moreover, the plaintiff is proved to be living separately for the last 30-35 years. Both the Courts on appreciation of evidence have come to a conclusion that the review-applicant separated.

10. This Court has carefully read the judgment passed in **Jai Narain's case (supra)**.

11. It may be noted here that this judgment lays down that registration of a consent decree is required. With highest respect, the aforesaid view now cannot be followed particularly, when the Hon'ble

Supreme Court in *Khushi Ram and others Vs Nawal Singh, (2021) 16 SCC 279, Ravinder Kaur Grewal and others Vs Manjeet Kaur, (2020) 9 SCC 706 and Mohammade Yousuf and others Vs Raj Kumar and others, (2020) 10 SCC 264*, have held that a consent decree passed by the Court acknowledging a prior family settlement is not required to be registered if it is concerning the suit property.

12. The second limb of argument of the learned Senior counsel also does not have substance because the plaintiff has no right in the property as the property was non-ancestral. The plaintiff was required to be a party if he had some pre-existing right in the property.

13. Moreover, the scope of review is well defined. Order XLVII Rule 1 of the Code of Civil Procedure, 1908, lays down that review of judgment is permissible only if there is some mistake or error apparent on the face of the record or for any other sufficient reasons. However, the review applicant has failed to draw the attention of the Court to any apparent error.

14. Hence, the review application is dismissed.

March 20th, 2024

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(ANIL KSHETARPAL)
JUDGE