

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.599 of 1993 (O&M)
Reserved on:05.04.2024
Pronounced on: 16.04.2024

Mohinder Singh (deceased)
through his LRs

.....Appellant(s)

Vs

Narinder Singh (deceased)
through his LRs & Anr.

.....Respondent(s)

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By:-Mr. Ashish Aggarwal, Senior Advocate with
Ms. Aashna Aggarwal, Advocate and
Mr. Karan Singla, Advocate for the appellant(s)

Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Akshay Jindal, Advocate, Mr. Aditya Jain,
Advocate and Mr. Pankaj Gautam, Advocate
for the respondent(s).

DEEPAK GUPTA, J.

This Regular Second Appeal is directed against concurrent findings of the Courts below, whereby suit of the plaintiff – appellant has been dismissed. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

2. Sole plaintiff – Mohinder Singh (*appellant herein, through his legal representatives*); and defendant No.1 – Narinder Singh (*respondent No.1 herein through his LRs*) are real brothers being sons of Sohan Singh. Defendant No.2 – Amarjit Singh (*respondent No.2 herein*) is the son of Narinder Singh i.e., grandson of Sohan Singh. Dispute is regarding two properties – (i) situated in Adda Bazar, Tarn Taran, with present Municipal No.6/223-224; and (ii) house situated in Mohalla Rodupura, Tarn Taran, bearing present Municipal Number 05/74, both detailed and described in headnote of the plaint.

3. Plaintiff filed Civil Suit (No.359 of 1984) for declaration by pleading that parties constituted a Joint Hindu Family (JHF) and the suit properties were jointly owned by the said JHF. According to him, an agreement dated 22.08.1981 (Ex.P.1) was entered into between him and defendant No.1, as per which none of them or none of their legal heirs, will get any transfer deed in their favour from their father and that suit properties shall remain joint. The said agreement was entered to keep the integrity and jointness of the JHF. It was alleged that defendant No.2 had started claiming to be exclusive owner of the property situated in Adda Bazar, Tarn Taran, i.e. shop and its First Floor on basis of a sale deed in respect thereof from Sohan Singh. Plaintiff claimed that Sohan Singh was not in proper state of mind and used to remain unwell for more than two years and so, if any such transfer deed was executed, the same was void and the result of misrepresentation and act of fraud and not binding upon him. Plaintiff prayed for decree of declaration that he and defendant No.1 are joint owners of both the properties. He also prayed for a consequential relief of permanent injunction to restrain defendants from interfering in the title of the plaintiff and defendant No.1 in any manner.

4. Defendant No.1 in his written statement denied that the parties constituted any ; or any of the property was jointly owned by any such JHF. According to him, plaintiff has been living separately from him (defendant No.1) and their father since long time. He further submitted that the shop property as situated in Adda Bazar, Tarn Taran, was exclusively owned by Shri Sohan Singh by virtue of a sale deed dated 20.12.1954 (Ex.D7) and thus, it was his self-acquired property, with which neither plaintiff nor answering defendant had any concern. Sohan Singh had sold the said property to defendant No.2 by way of sale deed dated 29.09.1981

(Ex.DW8/A). Defendant No.1 further pleaded that he was in possession of the said property as tenant, having been inducted therein by Sohan Singh by virtue of Rent Notes dated 22.09.1977 (Ex.D3 and Ex.D4). Regarding the house property bearing Municipal No.5/74 situated in Mohalla Rodupura, Tarn Taran, it was claimed by defendant No.1 that it was exclusively owned by him, as he had purchased the vacant site of the said house vide sale deed dated 11.12.1968 (Ex.D6) and, thereafter, built the house thereon with his own funds after getting a site plan sanctioned from the Municipal Committee, Tarn Taran. He admitted the possession of the plaintiff on the said house but pleaded that plaintiff being his brother, he was living therein with his permission as a licensee without having any ownership rights therein. Defendant No.1 further pleaded that in case any part of the property was owned by Sohan Singh at the time of his death, then by virtue of a registered Will dated 25.07.1980 (Ex.D2), he (defendant No.1) had become owner thereof. Defendant denied any Agreement/ Memorandum dated 22.08.1981 (Ex.P1) as relied by the plaintiff. With this stand, he prayed for dismissal of the suit.

5. Defendant No.2 in his separate written statement claimed to be owner of the property situated in Adda Bazar, Tarn Taran by way of sale deed dated 29.09.1981 (Ex.DW8/A) in his favour, having been purchased for consideration of ₹ 25,000/-, and on which defendant No.1 was a tenant during the lifetime of Sohan Singh vide Rent Note dated 22.9.1977.

6. Following issues were framed for adjudication:-

- “1. Whether the plaintiff and defendant No.1 constituted a Joint Hindu Family as alleged? OPP.
2. Whether the properties in dispute are Joint Hindu Family properties as alleged? If so, between whom and its effect? OPP.

3. Whether there was any agreement dated 23.8.1981 between the plaintiff and defendant No.1 regarding the disputed properties? If so, its effect? OPP.
 4. Whether the suit is properly valued for the purpose of court fee and jurisdiction?OPP
 5. Whether the suit is not maintainable in the present form? OPD.
 6. Whether the defendant No.1 is in possession of the property bearing No.6/223/224 as a tenant If so, under whom?OPD
 7. Whether Sohan Singh deceased sold away the property bearing No.6/223/224 in favour of Amarjit Singh defendant No.2 vide sale deed dated 29.9.1981. If so, its effect? OPD
 8. Whether Sohan Singh executed a valid Will dated 25.07.1980 in favour of defendant No.1? If so, its effect? OPD.
 9. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
 10. Relief.
7. Trial Court decided Issues No.1, 2 and 3 against the plaintiff by holding that he had failed to prove that he and defendant No.1 constituted any Joint Hindu Family; or that properties in dispute were Joint Hindu Family Properties or that there was any agreement as relied by the plaintiff. Issues No.4, 5 and 9 were decided in favour of the defendants. The findings on Issue Nos.6, 7 and 8 went in favour of the defendants by holding that Sohan Singh was the exclusive owner of the shop property as situated in Adda Bazar by virtue of sale deed dated 20.12.1954, which he later on sold to defendant No.2 by way of Sale Deed dated 29.09.1981 (Ex.DW8/A). It was further found that defendant No.1 – Narinder Singh was the exclusive owner of the house property as situated in Mohalla Rodupura, Tarn Taran by virtue of a Sale Deed dated 11.12.1968 (Ex.D6). It was also found that

Sohan Singh had executed a valid and registered Will dated 25.07.1980 (Ex.D2) in favour of defendant No.1. With all these findings, the suit was dismissed vide judgment and decree dated 04.05.1988.

8. All the findings as rendered by the trial Court were upheld by the First Appellate Court of learned Additional District Judge, Amritsar in Civil Appeal (RBT) No.11 of 1988/1991 filed by the plaintiff and the said appeal was dismissed on 19.10.1992.

9. Assailing the afore-said concurrent findings, it is contended by learned counsel for the appellant- plaintiff that the Courts below failed to appreciate the relationship between the parties to the effect that they were real brothers and as per legal presumption, they were members of the Joint Hindu Family and simply because plaintiff being in service, used to reside outside, will not disrupt the status of a Joint Hindu Family. Learned counsel contends that being in service, appellant had been sending all his earnings to his father Sohan Singh and it is with that nucleus that property had been purchased by Sohan Singh and, therefore, the alleged sale deed by Sohan Singh in favour of defendant No.2 was illegal and void. Learned counsel contends further that defendant No.2 had no source of income so as to purchase the shop property situated in Adda Bazar nor Sohan Singh had any necessity to alienate the same; that defendant No.2 did not have any income to purchase the property and that Courts below also failed to take into consideration the fact that defendant No.1 – Narinder Singh was in a position to dominate the will of Sohan Singh. Besides, there were numerous suspicious circumstances surrounding the Will, as there was no reference either of the mother of the parties, who was alive at that time or to disinherit the appellant- plaintiff besides two sisters. Learned counsel also argues that there was no reason to ignore the agreement dated 22.08.1981 (Ex.P1)

executed between the parties and that the same did not require any registration.

10. Refuting the afore-said contentions, learned counsel for the respondents contended that the Courts below rightly came to the conclusion that the parties did not constitute any Joint Hindu Family nor any such family owned any Joint Hindu Family Property. By drawing attention towards the sale deeds proved on record, it is urged that property situated in Adda Bazar was exclusively owned by Shri Sohan Singh, which was his self-acquired property, which was later on sold to defendant No.2; whereas the plot under-neath the house property in Mohalla Rodupura had been purchased by defendant No.1 in 1968, on which he built his house and permitted plaintiff to reside therein as a licensee being his brother and so, there was no jointness amongst the parties. Learned counsel argues that it has been rightly held that even if the agreement dated 22.08.1981 (Ex.P1) was taken into consideration, the same did not create any right in favour of the plaintiff because the said agreement is not signed by Sohan Singh, who was the exclusive owner of the shop property of Adda Bazar, Tarn Taran and in his absence, no such agreement could have taken place. Learned counsel also argues that there is concurrent finding of facts by the Courts below and that there is no reason to disturb those findings.

11. I have considered the submissions of both the parties and have appraised the entire record (available on Document Management System) (DMS) of this Court.

12. As found by the Courts below, Shri Sohan Singh, the father of the plaintiff and defendant No.1 had purchased the property situated in Adda Bazar, Tarn Taran in his name vide a Registered Sale Deed dated 20.12.1954 (Ex.D7). There is no evidence on record to show that Shri Sohan Singh had

any ancestral property in his hand, so as to arrange funds for purchasing the property of Adda Bazar Tarn Taran by way of sale deed dated 20.12.1954 (Ex.D7) and thus, clearly it was his self-acquired property. The other property situated in Mohalla Rodupura was purchased by defendant No.1 by virtue of sale deed dated 11.12.1968 (Ex.D6). The contention of counsel for the appellant to the effect that the said property was purchased in the name of defendant No.1 out of the funds provided by plaintiff is not supported by any cogent evidence except the oral evidence. Plaintiff never challenged the said sale deed in favour of defendant No.1 so as to claim ownership of the said property. Thus, it is found that defendant No.1 was the exclusive owner of the said property.

13. As per own case of the plaintiff, he being in service has been residing separately from his father and brother since long. It has been found from the documentary evidence as referred above that both the properties in question are self-acquired; one of Sohan Singh and the other of defendant No.1 – Narinder. It has been further found by the Courts below that there is no evidence that there was any ancestral property in the hands of Sohan Singh.

14. There is presumption of jointness of a family, provided it is joint in food, worship and residence. In the present case, there is no such evidence to show that plaintiff resided together along with his father in food, worship or residence. Not only this, even if it be assumed for the sake of arguments that though it was a joint Hindu family but because of his posting outside being in service, plaintiff was not staying together with his father, still there is no presumption that properties owned by the members of the Joint Hindu Family are also the Joint Hindu Family Property.

15. In order to prove that properties, which are owned by individual

members of the Joint Hindu Family, are the Joint Hindu Family property, it must be proved that there is nucleus of a Joint Hindu Family Property and that the property in question must have been purchased from that nucleus. The burden to prove is upon the party, who asserts that property is Joint Hindu Family Property. Reference in this regard can be made to ***Kulwant Singh Vs. Makhan Singh, 2003(1) RCR (Civil) 433.*** Similarly in ***D.S. Lakshmaiah & Another Vs. L. Balasubramanyam & Another, 2004(1) PLR 658,*** it has been held by Hon'ble Supreme Court as under:-

“18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.”

16. In the present case, plaintiff has utterly failed to prove the existence of Joint Hindu Family and even if the Joint Hindu Family is assumed to be in existence, plaintiff utterly failed to prove that said Joint Hindu Family had a nucleus, with which the property in question could be acquired.

17. The main emphasis of learned counsel for the appellant has been on the alleged Family Settlement dated 22.08.1981 (Ex.P1), which was purportedly executed between the plaintiff and defendant No.1 and as per which they agreed that they will not get any transfer deed executed in their favour from their parents and that property shall remain joint. Although defendant No.1 has denied the execution of any such family settlement and alleged the same to be result of fraud but even if it be assumed that any such settlement had been arrived at between plaintiff and defendant No.1, it has

absolutely no evidentiary value for the simple reason that it is referring about the property, which was exclusively owned by Shri Sohan Singh and who is not a party to the settlement; or a property which is exclusively owned by defendant No.1. Said settlement could not in any manner whatsoever bind Sohan Singh not to execute any sale deed regarding his self-acquired property. As has been found, Sohan Singh sold the property situated in Adda Bazar by virtue of a registered Sale deed dated 29.09.1981 Ex.DW8/A in favour of defendant No.2.

18. Plaintiff has tried to assail the afore said sale deed on the ground that defendant No.2 was minor at that time and had no earnings. However, the Courts below have referred to the statement of DW8 Pritam Kaur, the mother and guardian of defendant No.2, who proved payment of requisite consideration by arranging the funds. Even if for the sake of arguments, it is assumed that no consideration was paid or adequate consideration was not paid, it was for Sohan Singh to challenge the same. Plaintiff- Narinder Singh having no right, title or interest in the said property, has no right to assail the legality or validity of the sale deed in favour of defendant No.2. As such, it has been rightly held that plaintiff did not acquire any right whatsoever by virtue of the alleged Family Settlement dated 22.08.1981 (Ex.P1).

19. If it is to be assumed that said agreement Ex.P1 created any right in favour of the plaintiff in respect of the house property situated at Mohalla Rodupura, which is the self-acquired property of defendant No.1, the said agreement required registration, as it purportedly creates rights for the first time in favour of plaintiff.

20. As far as the Will dated 25.07.1980 (Ex.D2) is concerned, it is registered Will, which has been duly proved on record by the testimony of

attesting witness DW2 Atma Ram. It is a finding of fact recorded by the Courts below and the said finding does not require any interference.

21. After appraising the judgments as passed by the Courts below, this Court finds no reason to disturb the concurrent findings recorded by the Courts. No specific question of law is found to be involved. As such, holding that the present appeal to be devoid of any merit, the same is hereby dismissed.

April 16, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No