

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2074-1989 (O&M)

Inderjit Singh and another

.....Appellants

Vs.

Balbir Singh and others

.....Respondents

Reserved On.: 14.03.2024
Pronounced On: 03.04.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Mr. Anish Setia and Mr. Surinder Singh, Advocates
for the appellants.

Mr. G.S. Dhaliwal, Advocate
for the respondents.

DEEPAK GUPTA, J.

This Regular Second Appeal is directed by the defeated plaintiffs against concurrent judgments of the Courts below, inasmuch as suit filed by them on 28.7.1983 for possession of the suit property was dismissed by the trial Court on 09.09.1986; and appeal against that judgment was dismissed by the first Appellate Court on 31.03.1989.

2. Trial Court record was called and the same has been perused. In order to avoid confusion, parties shall be referred as per their status before the Trial Court.

3. Plaintiff No.1 & 2 Inderjit Singh and Kuljit Singh (*appellants herein*) are the sons of Major Jagmel Singh; whereas other plaintiff Nos.3 to 5 (*performa respondent herein*) are the grandsons of Jagmel Singh. It was claimed by the plaintiffs that all of them with Major Jagmel Singh constituted a

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Joint Hindu Family. Jagmel Singh died on 06.03.1983. Said Jagmel Singh had sold the suit land to defendant Nos.1 to 9 (*respondent Nos.1 to 9 herein*) by way of registered sale deed dated 14.06.1972 and the said vendees further alienated the suit land by way of sale/mortgage to the remaining defendants Nos.10 to 20 (*respondent Nos.10 to 20 herein*) by way of different transactions. It was alleged that sale deed executed by Jagmel Singh and all the subsequent alienations made by vendees were without consent of plaintiffs and any legal necessity, and without any benefit of estate to the joint family and so, the same were not binding on the rights of the plaintiffs. Challenging these alienations, plaintiffs prayed for decree of possession of the suit land.

4. Contesting the suit it was pleaded by the defendants that plaintiffs and Jagmel Singh were governed by Punjab Customary law in the matter of alienations and that suit property was not the ancestral property. They also raised the objections that suit was time barred; that plaintiffs were estopped from filing the suit due to their own act and conduct; and that they (defendants) were bona fide purchaser for consideration and that alienations were legal having been made for legal necessity as Major Jagmel Singh had represented that he required money for purchasing some other land, for business and other necessities.

5. Following issues were framed for adjudication:-

1. Whether the plaintiffs constituted a joint Hindu family with Jagmel Singh and seller of the land in dispute ? OPP
2. Whether the property in dispute was the joint Hindu family and coparcenary property of the plaintiffs and that of Jagmel Singh ? If so, to what effect ? OPP
3. Whether the suit of the plaintiff is within limitation ? OPP

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4. Whether the plaintiffs have no locus standi to file the present suit ?
OPD

5. Whether the plaintiffs have no cause of action ? OPD

6. Whether the plaintiffs are stopped from filing the present suit by their own act and conduct ? OPD

7. Whether the vendees of the land in dispute are bona fide purchasers for value ? OPD

8. Whether suit in the present form does not lie ? OPD

9. Whether the alienations of the land in dispute were for legal necessity ? OPD

10. Whether the land in dispute was mortgaged by Jagmel Singh on 20.3.2000 BK with defendants No. 17 to 20 ? If so, its effect ? OPD 17 to 20.

11. Whether the defendants No. 8 to 9 are minors ? if so, to what effect ?
OPD

12. Relief.

6. After taking the evidence of parties on record and hearing both the sides, trial Court decided issue No.1 in favour of the plaintiffs by holding that they constituted a joint Hindu Family with Jagmel Singh. However, issue No.2 was decided against the plaintiffs by holding that suit property was not the joint Hindu Family or co-parcenary property. Under issue No.7, defendants were held to be bona fide purchaser for value. The alienations were held to be for legal necessity and so, issues Nos.7 & 9 were decided in favour of the defendants. The findings on the other issues went in favour of the plaintiffs. Consequent to all the findings, suit was dismissed.

7. On appeal filed by the plaintiffs, the Appellate Court upheld the findings on issues No.2, 7 & 9. Besides, the findings on issue Nos.1 & 4 were reversed and these issues were also decided in favour of the defendants-respondents. Consequently, the appeal was dismissed.

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8. Assailing the aforesaid findings, it is contended by learned counsel for the appellants – plaintiffs that suit property was inherited by Jagmel Singh from his father Kehar Singh, who was occupancy tenant and that by virtue of the provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952, only the proprietary rights were conferred on the occupancy tenants and it cannot be considered to be acquisition of the Proprietary Rights Act and since, the occupancy rights are inheritable, therefore suit property in the hands of Jagmel Singh was ancestral co-parcenary property. Still further, it is argued that well-reasoned finding of the trial Court to the effect that plaintiff and Jagmel Singh constituted a Joint Hindy Family has been wrongly reversed by the first Appellate Court, as there was no evidence to show any custom to the contrary. Besides, there was no evidence to come to the conclusion that suit land was sold by Jagmel Singh for any legal necessity.

9. On the other hand, contention of learned counsel for the contesting respondents - defendants is that suit property was self-acquired property in the hands of Jagmel Singh and therefore, he was competent to alienate the suit land. Learned counsel contends that once the suit property was self-acquired, the findings on the other issues become insignificant.

10. After hearing both the sides, this Court does not find any merit in the appeal. On the basis of evidence on record, it has been found by the First Appellate Court that Jagmel Singh had inherited the tenancy rights from his father Kehar Singh, as per mutation Ex.P5. The later mutations Ex.P11, Ex.P12 and Ex.P13 would reveal that for the first time, the proprietary rights in the suit land were acquired by Major Jagmel Singh himself on 29.08.1953. Thus, it is Major Jagmel Singh, who became owner of the property in dispute, for the first

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time. His father Kehar Singh was not the owner and rather, was only the occupancy tenant and since Jagmel Singh acquired the ownership rights for the first time, so obviously the suit property became self-acquired in his hands. Learned First Appellate Court has rightly placed reliance upon “*Mst. Karmi and others v. Bachna and others*” 1959 P.L.R. 313, wherein it was held that on acquisition of the proprietary rights under Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952, the property became self-acquired. Similarly, in “*Fakira v. Smt. Rajo*”, 1956 P.L.R. 195, it has been held that by virtue of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952, the occupancy tenants becomes owner on the appointed date, for the first time and therefore, the land in his hand becomes his self-acquired property and cannot be treated as ancestral.

11. In view of the settled legal position as above, once it is found that suit property was self-acquired property in the hands of Jagmel Singh, the plaintiffs have no right to challenge the same on any of the pleaded grounds. As such, all other issues become insignificant.

12. Consequently, the concurrent findings of the Court below are hereby upheld. The present appeal is found to be devoid of any merits and so, the same is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

April 03, 2024

Neetika Tuteja

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