

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

RSA-239-1994 (O&M)
Date of decision: 03.05.2024

SUDESH KUMARI @ SUDESH BAJAJ AND & ORS.

..Appellants

Versus

KASTURI LAL (DECEASED) THROUGH LRS & ANR.

..Respondents

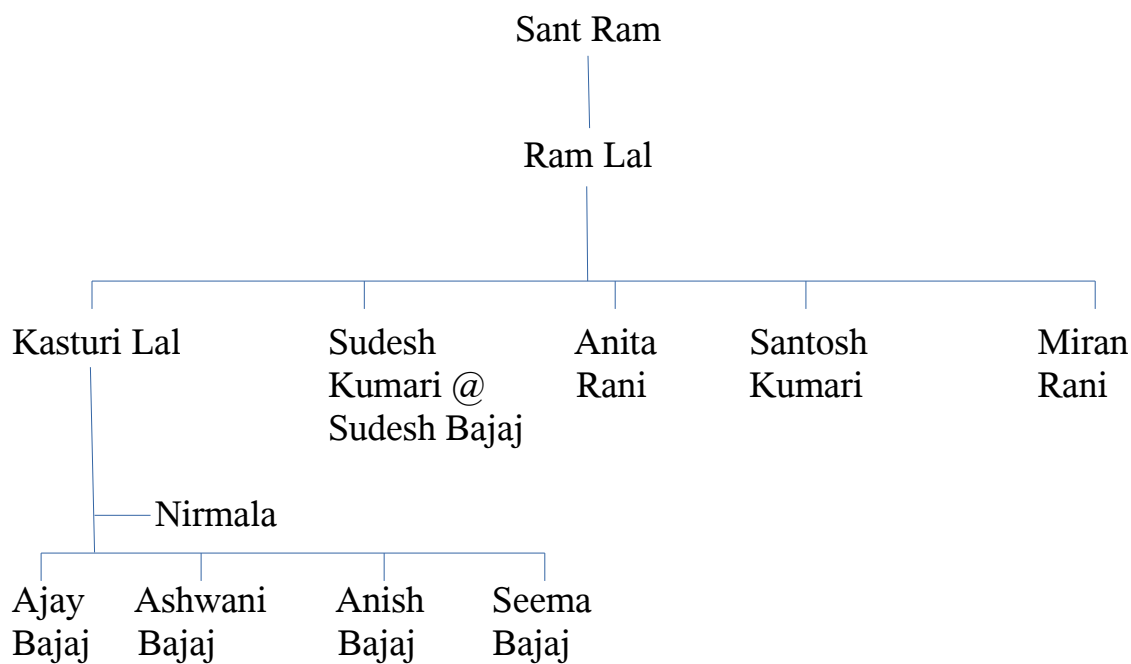
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Bali, Advocate
for the appellants.

Mr. Gaurav Chopra, Sr. Advocate
with Mr. Anurag Chopra, Advocate
Mr. Akshat Dalal, Advocate
Ms. Sanjana, Advocate
and Ms. Gauri C. Kaushal, Advocate
for respondents No.1 to 3 (through video conferencing).

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the plaintiffs assail the correctness of the judgment passed by the First Appellate Court, which in turn has slightly modified the judgment of the trial Court.
2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
3. For better comprehension of the inter se relationship between the parties, a small pedigree of the family is demonstrated as under:-



4. The plaintiffs are daughter of Sh. Ram Lal, who filed suit against their brother Sh. Kasturi Lal and Nephew Sh. Ajay. It was prayed that the defendants are liable to render accounts of partnership firm M/s Ram Lal and Kasturi Lal Cloth Merchants and for partition of 4/5th share in House No.10, Mohalla Peeranwala Bazar, Ferozepur City. While filing the suit, the plaintiffs claim that plaintiff No.4 Smt. Miran Rani was partner to the extent of 20% share, whereas, Sh. Ram Lal and Sh. Kasturi Lal were having 40% share each. Sh. Ram Lal died on 20.09.1984. At the relevant time, Smt. Sudesh Kumari was unmarried. It was asserted that defendant No.1 continued with the business after the death of Sh. Ram Lal, who was exclusive owner of House No.10. The defendants while contesting the suit claimed that plaintiff No.4 was never a partner and House No.10 was purchased by defendant No.1 and his father Sh. Ram Lal out of the funds of joint Hindu family. The plaintiffs being member of the joint Hindu family was entitled to ownership of 50% of the house and after the death of Sh. Ram Lal, he will be entitled to additional 1/10th share. Defendant No.2 was added as partner after the death of Sh. Ram Lal. The trial Court held that the

plaintiff No.4 was not partner of the firm. It was held that the plaintiffs are entitled to rendition of accounts qua 1/10th share each in the half share of Sh. Ram Lal in the partnership firm. With regard to the house, the suit was decreed by declaring that the plaintiffs shall be entitled to 1/5th share each.

5. Upon reappreciation of evidence, the First Appellate Court came to a conclusion that the house was also purchased by the Hindu Undivided Family firm and therefore, the plaintiffs shall be entitled to only 1/10th share each.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

7. It may be noted here that the plaintiffs after having refused to produce the sale deed of the house, which was admittedly in their possession, have filed application for production of the same in additional evidence. The application is not opposed, hence, the same is allowed.

8. The learned counsel representing the appellants has made the following submissions:-

- i. The defendants have failed to prove that the house was purchased from the funds of the Hindu Undivided Family firm.
- ii. The defendants have failed to prove that the partnership firm was a joint Hindu Undivided Family firm.
- iii. The defendants were required to produce the partnership deed, which has not been produced.

9. Per contra, the learned Senior counsel representing the respondents while drawing the attention of the Court to the deposition of Sh. S.K. Chadha, officer from the Income Tax Department submits that return for the year 1970-1971 was filed by M/s Ram Lal Kasturi Lal, Ferozepur

City as Hindu Undivided Family. The assessment order was also passed as Hindu Undivided Family firm. He further stated that in the assessment order and other papers, the assessee was owner of House No.10, Mohalla Peeranwala Bazar. He further submits that Smt. Miran Rani while appearing as PW-4 has admitted that Sh. Ram Lal, her father had no other income except from the cloth business, which was being run by the by the firm. He further submits that the plaintiffs in order to conceal from the Court intentionally did not produce the registered sale deed, which was admittedly in their possession as per the deposition of PW-3 Sh. Lekh Raj, the husband of Smt. Sudesh Kumari.

10. This Court has considered the submissions of the learned counsel representing the parties.

11. PW-2 is the witness examined by the plaintiff. He has categorically stated that as per the assessment order, the house belongs to the Hindu Undivided Family firm. Moreover, the admission of plaintiff No.4 to the effect that his father had only one source of income and i.e. from the firm proves that the property was purchased in the year 1961 from the income of the Hindu Undivided Family firm.

12. The First Appellate Court has come to conclusion that in view of the deposition of PW-2, Income Tax official and the deposition of plaintiff No.4, it is evident that the house was purchased from the funds of Hindu Undivided Family. This Court does not find any reason to differ with the aforesaid opinion in absence of evidence to prove to the contrary.

13. The second argument of the learned counsel representing the appellant also has no substance because as per assessment order of the

Income Tax Department, M/s Ram Lal Kasturi Lal, Ferozepur City, was Hindu Undivided Family firm. The plaintiffs have not produced any evidence to prove to the contrary. The plaintiffs are required to stand on their own legs. The primary duty of the plaintiffs is to prove their case. They came to the Court claiming that plaintiff No.4 Smt. Miran Rani was partner to the extent of 20% and Sh. Ram Lal was exclusive owner of House No.10, however, they failed to prove the same. The plaintiffs witnesses have made significant admissions which destroys their case.

14. As regard the last submission, it may be noticed that the plaintiffs are required to prove their case. They cannot shift burden upon the defendants to prove that the plaintiffs claim is not genuine. The burden to prove their case lay on the plaintiffs, however, they failed to discharge the same.

15. In these circumstances, there is no error in the judgment passed by the First Appellate Court.

16. Dismissed accordingly.

17. All the pending miscellaneous applications, if any, are also disposed of.

May 03rd, 2024

(ANIL KSHETARPAL)
JUDGE

Ay
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No