

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

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2024:PHHC:013709

RSA-2696-1994

Date of decision: 01.02.2024

MOHINDER KAUR

..Appellant

Versus

JAGRUP SINGH AND OTHERS

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Satyam Arora, Advocate
for Mr. C.M. Munjal, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the findings of fact arrived at by the First Appellate Court while modifying the judgment and decree passed by the trial Court is assailed by the plaintiff.

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

3. Sh. Tek Singh suffered a decree on 02.03.1987 in favour of his three sons namely Sh. Jagrup Singh, Sh. Jaswant Singh and Sh. Balwant Singh with respect to 54 kanal and 10 marlas land. Smt. Mohinder Kaur (appellant) widow of Sh. Kulwant Singh son of Sh. Tek Singh filed a suit for grant of decree of permanent injunction claiming that the aforesaid decree is not binding on her as the suit property is a coparcenary property. The defendants contested the suit while asserting that the property is not coparcenary property. The trial Court decreed the suit and held that the judgment and decree dated 02.03.1987 was not binding on the plaintiff's rights. Sh. Jagrup Singh and Sh. Jaswant Singh sons of Sh. Tek Singh filed first appeal. The First Appellate Court after examining the entire record,

recorded the following findings of fact:-

“Now it is to be seen as to whether suit property measuring 54 kanals 10 marlas is a coparcenary property or not. To prove. That said property is a coparcenary property. Respondent No.1 has examined PW.1 Sohan Lal, Naib Suddar Kanungo. He has placed on record on excerpt Ex.1. According to this witness in Bikrani 1958 the land measuring 152 Bighas 5 Biswas as shown in excerpt Ex.P.1 was owned to the extent of 2/3 share by Naraina and Prema Sons of Ishar Singh and the remaining 1/3 share was owned by Sahbo widow of Attar Singh. According to mutation No.482 Prema and Sahbo inherited the estate of Naraina and vide mutation No.1732 the property of Prema was inherited by Mohan Singh, Pritam Singh, Parabhdayl Singh and Tek Singh. In the year 1955-56 vide mutation No.3692 the property of smt Sahbo was inherited by the said sons of Prema i.e. Mohan Singh, Pritam Singh, Prabhdayl Singh and Tek Singh and all the abovesaid four sons became owner in equal shares to the extent of 1/4th share each. In the year 1960 after the consolidation and portion by the said four brothers, suit land measuring 54 Kanals 10 Marlas fell to the share of Tek Singh said Tek Singh, therefore transferred the suit land on the basis of consent decree in favour of appellants and Balwant Singh and Mutation on the basis of it bearing No. 7225 dated 18.5.87 was sanctioned. The said statement clearly shows that 1/2 share of the property was inherited by Tek Singh from his accessions and 1/2 of the property from Smt. Sahbo widow of Attar Singh. Attar Singh who was a brother of the Tek Singh i.e. Prema there whole of the property was not ancestral in the hands of Tek Singh and as such it can safely be held that 1/2 share of 54 kanals 10 marlas land which was owned and possessed by Tek Singh was ancestral property and the remaining 27 kanals 5 marlas was non-ancestral. The findings of the trial court that decree in question dated 2.3.87 was procured through a fraud is not proved on the record nor it can be set aside in toto. To the extent of 27 kanals 5 marlas which was a non-ancestral property of Tek Singh he could have suffered a decree in favour of appellants and Balwant Singh. In other words ½ share of the total land measuring 54 kanals 10 marlas which was self-acquired property of Tek Singh could have been given by him to anyone so decree in question to that extent is valid and it is binding on the respondent.”

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4. Thus, the trial Court held that the plaintiff is entitled to 3/28th share in the land measuring 27 kanal and 5 marlas and decree with respect to 27 kanal and 5 marlas is valid.
5. This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.
6. The learned counsel representing the appellant failed to dispute the correctness of findings of fact arrived at by the Court below to the effect that 27 kanal and 5 marlas land was neither coparcenary nor ancestral as the same was inherited by Sh. Tek Singh and his brothers from Smt. Sahabo widow of Sh. Attar Singh.
7. Keeping in view the aforesaid facts, no ground to interfere is made out.
8. Dismissed accordingly.
9. All the pending miscellaneous applications, if any, are also disposed of.

February 01st, 2024
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(ANIL KSHETARPAL)
JUDGE

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