



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3934-2019 (O&M)
Reserved on: 17.07.2024
Date of decision: 23.08.2024

MOHINDER SINGH

..Appellant

Versus

GURDEV SINGH (DECEASED) THROUGH LRS & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Arzoo Modi, Advocate
and Mr. Mohd. Yousaf, Advocate
for the appellant.

ANIL KSHETARPAL, J.

1. **Brief facts of the case:-**

1.1 In this regular second appeal, the plaintiff assails the correctness of concurrent findings of facts arrived by the courts below while dismissing his suit for grant of decree of declaration to the effect that two transfer deeds executed by his father, Sh. Gurdev Singh are illegal and not binding upon his rights.

1.2 In substance, the plaintiff claims that the suit property is ancestral, coparcenary, and joint Hindu family property (though it is claimed to be Hindu undivided family).

2. **Arguments put forth by learned counsel representing the parties:-**

2.1 Learned counsel while relying upon the judgement passed in **Civil Appeal No.5120 of 2019, titled as Arshnoor Singh Vs. Harpal Kaur and others, decided on 01.07.2019**, submits that the property was inherited



by Sh. Gurdev Singh from his grand-father Sh. Sher Singh that is grandfather of Sh. Gurdev Singh. Hence, the property was ancestral and coparcenary property, therefore, the transfer of the property by registered deeds while excluding the appellants is illegal.

3. Discussion and analysis:-

3.1 It may be noted here that as per the findings of facts arrived at by the courts below Sh. Sher Singh's estate was mutated vide mutation number 932, dated 08.03.1946, in favour of his three sons namely Sh. Harnam Singh, Sh. Battan Singh and Sh. Mal Singh. Sh. Harnam Singh is stated to have died in the year 1959. The mutation entry with respect to his inheritance has not been produced on record, however, from excerpt produced by the appellant, it is evident that on the death of Sh. Harnam Singh, property was inherited by Sh. Gurdev Singh, Smt. Karmi (widow of Sh. Harnam Singh) and Smt Shindo (daughter of Sh. Harnam Singh). Sh. Battan Singh's estate was inherited by Sh. Mal Singh, Sh. Gurdev Singh, Smt. Karmi and Smt. Shindo. Sh. Gurdev Singh also inherited the property on the basis of Will executed by Sh. Mal Singh vide mutation No.1396, dated 14.02.1962. Sh. Gurdev Singh also purchased 28 kanal and 5 marlas land in the year 1966. Sh. Gurdev Singh also inherited property from Smt. Karmi and Smt. Shindo vide mutation No.1543 dated 09.11.1971. The entire property of the family was located in two different villages.

3.2 On the basis of the aforesaid evidence, both the Courts held that the plaintiff has failed to prove that the property was ancestral, coparcenary or joined Hindu family property because on the death of Sh. Harnam Singh in the year 1959, the property was inherited by his class-I heirs as per



Section 8 of the Hindu Succession Act, 1956 (in short ‘1956 Act’) including his widow and daughter. Moreover, mutation No.1252 has not been produced. When Sh. Battan Singh died, the property was inherited by his class-I heirs as per Section 8 of the 1956 Act. Sh. Gurdev Singh also inherited the property from his uncle Sh. Mal Singh on the basis of Will.

3.3 The reliance placed by the learned counsel for the appellant on Arshnoor Singh’s case (supra) is misplaced because in that case Sh. Lal Singh passed away in the year 1951 i.e. before the 1956 Act came into force. In the matter at hand, Sh. Harnam Singh died in the year 1959 i.e. after enforcement of the 1956 Act.

3.4 Furthermore, in Commissioner of Wealth Tax Kanpur and others Vs. Chander Sen and others, (1986) 3 SCC 567, the Supreme Court held that once the property is inherited under Section 8 of ‘1956 Act’, such property is not joint Hindu family coparcenary property. This judgement was followed in Yudhishter Vs. Ashok Kumar, 1987(1) SCC 204 and Uttam Vs. Saubhag, 2016(4) SCC 68.

3.5 In view of the aforesaid discussion, the judgement in Arshnoor Singh’s case (supra) is not applicable to the facts of the present case.

4. Decision:-

4.1 Hence, finding no merits, the appeal is dismissed.

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

August 23rd 2024

(ANIL KSHETARPAL)

By

JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No