



Sh. Dalbara Singh and others ...Appellants

Sh. Chet Singh (Since Deceased)
through his LRs and others **...Respondents**

Present: Mr. Ashok Singla, Advocate and
Mr. Ankush Singla, Advocate
for the appellants.

Mr. Arvind Mittal, Advocate and
Mr. Sarvjeet Singh Thakur, Advocate
for the respondents No. 1 to 3.

ANIL KSHETARPAL, J.

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

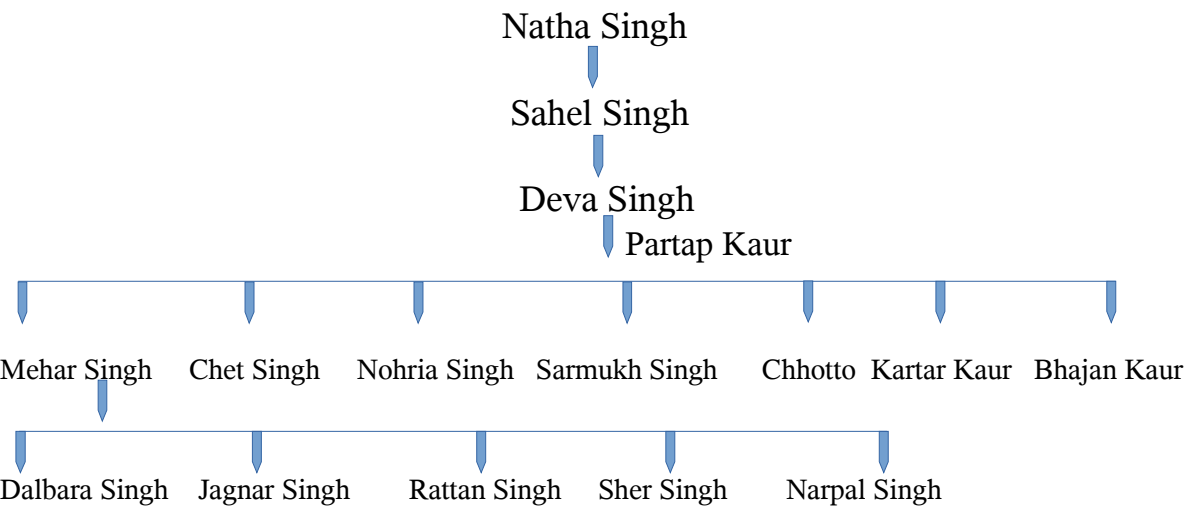
1.1 In this regular second appeal, the plaintiffs assail the correctness of the First Appellate Court's judgment which in turn has reversed the trial Court's judgment.

1.2 In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

1.3 In this litigation, the dispute is between the heirs of Sh. Deva Singh. The succession to his property is in dispute. Sh. Deva Singh died in the year 1964 leaving behind four sons-Sh. Mehar Singh, Sh. Chet Singh,

Sh. Nohria Singh, Sh. Sarmukh Singh and three daughters-Smt. Chhotto,

Smt. Kartar Kaur, Smt. Bhajan Kaur and widow-Smt. Partap Kaur. To demonstrate the relationship between the parties, a following pedigree table is drawn:-



1.4 On the death of Sh. Deva Singh, the property was mutated in favour of all class I heirs including three daughters and widow-Smt. Partap Kaur. In 1969, Smt. Partap Kaur also died. Her share was also inherited by her four sons and three daughters. On 09.10.1987, Smt. Chhotto, Smt. Kartar Kaur and Smt. Bhajan Kaur suffered a consent decree in favour of Sh. Chet Singh and Sh. Nohria Singh. When Sh. Deva Singh died in the year 1964, the plaintiffs claimed their property on the basis of a Will. The parties fought litigation before the revenue authorities on the question of sanction of mutation. Ultimately, the aforesaid proceedings were finally decided by the Financial Commissioner approving sanction of mutation in favour of all the class I heirs.

1.5 Sh. Mehar Singh died three years before the filing of the suit. On 22.12.1990, the plaintiffs filed a suit for the grant of decree of declaration claiming that plaintiffs No. 1 to 3 and defendants No. 10 to 11



are the owners to the extent of $1/4^{\text{th}}$ share, whereas, defendant No.4 is the owner of $1/4^{\text{th}}$ share. The plaintiffs also sought declaration that the plaintiffs and defendants No. 10 to 11 are the owners and have $1\frac{1}{2}$ share each in the land in dispute. Therefore, a decree for joint possession is required to be passed in their favour while ordering correction in the revenue record. The defendants No. 1 and 2 contested the suit. The plaintiffs are two sons of Sh. Mehar Singh. Sh. Sarmukh Singh is plaintiff No.3, whereas, the defendants are Sh. Chet Singh, Sh. Nohria Singh, Smt. Kartar Kaur, Smt. Bhajan Kaur, Sh. Mihaan Singh, Sh. Mehma Singh, Sh. Budhu sons of Smt. Chhotto, Smt. Jeet Kaur @ Jito etc. daughters of Smt. Chhotto, Sh. Rattan Singh, Sh. Harpal Singh sons of Sh. Mehar Singh.

1.6 Upon appreciation of evidence, the trial Court decreed the suit which in appeal has been reversed by the First Appellate Court.

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

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith the requisitioned Lower Court Record.

2.2 Learned counsel representing the appellants contends that the First Appellate Court has also held that the suit property is a joint Hindu family coparcenary and ancestral property and the First Appellate Court has erred in declaring that the suit was filed beyond the period of limitation. He submits that the plaintiffs' case is based upon natural succession, for which, there is no limitation, particularly, when the plaintiffs are already in joint



possession of the property.

2.3 *Per contra*, the learned counsel representing the respondents submits that the First Appellate Court has correctly held that the suit was filed beyond the prescribed time. While elaborating, he submits that Sh. Deva Singh died in the year 1964 and there were proceedings for sanction of mutation because the plaintiffs claimed the property of Sh. Deva Singh on the basis of a Will, which was not accepted. Thereafter, the plaintiffs slept over the matter and filed the suit in the year 1990.

3. **Analysis of the arguments put forth by the learned counsel:-**

3.1 This Court has considered the submissions made by the learned counsel representing the parties.

3.2 While analyzing and evaluating the submissions of the learned counsel representing the parties, it is significant to note that the First Appellate Court has not held that the suit property was joint Hindu Family coparcenary property. The First Appellate Court has specifically held that all the three terms, 'ancestral', 'coparcenary' and 'joint Hindu family' are not the same and have different meanings. The First Appellate Court has only held that the property is proved to be ancestral qua the plaintiffs. Thus, the learned counsel representing the appellants is not factually correct in assuming that the property has already been held to be 'coparcenary'. The concept of ancestral property is different from coparcenary. The plaintiff-Sh. Dalbara Singh while appearing as PW-3 has not stated that he constituted coparcenary with his father. Sh. Deva Singh constituted a coparcenary with all his four sons. When Sh. Deva Singh died in the year



1964, his property was inherited by all the class I heirs as per Section 8 of the Hindu Succession Act, 1956. At that time, neither the plaintiffs nor their father Sh. Mehar Singh claimed that the property was coparcenary and hence, it could be mutated by way of survivorship and not by succession. Subsequently, Smt. Partap Kaur died in the year 1969. At that time, her property was inherited by all class I heirs. At that time, the plaintiffs did not dispute the aforesaid position. Sh. Mehar Singh remained alive upto the year 1987. During his life time, he never claimed the property.

3.3 In this case, the plaintiffs have not led any evidence to prove the prevalent custom that mandates the inheritance by male heirs while excluding the widow and daughters.

3.4 With respect to the submissions on the aspect of limitation, it would be noticed that the plaintiffs while filing the suit have asserted that cause of action arose to the plaintiffs in the year 1988, when the defendants refused to accede to the plaintiffs request. However, the plaintiffs overlooked the fact that there was a previous round of proceedings for sanction of mutation. In the States of Punjab and Haryana, the Punjab Land Revenue Act, 1887, is applicable. If the mutation of the property is contested, the matter is referred to the superior authorities for decision. Ordinarily, it is contested by the Advocates like civil proceedings. Although, it is summary in nature. In this case, the parties contested the litigation not only before the Assistant Collector, Ist Grade but before the Collector, Commissioner and then Financial Commissioner. In this litigation, the plaintiffs were not successful because they claimed property on the basis of



a Will. Then they slept over the matter. They filed the suit only in December, 1990 and that also three years after the death of their father- Sh. Mehar Singh. The cause of action, if any, accrued in favour of the plaintiffs when the mutation of Sh. Deva Singh was finally sanctioned. The cause of action once again accrued, when Smt. Partap Kaur died in the year 1969. Thus, the suit filed by the plaintiffs was not filed within a period of three years from the date the cause of action accrued. As per Article 58 of the Schedule attached to the Limitation Act, 1908, the time from which the period will begin to run for filing a suit for declaration would arise when the right to sue first accrues. The important expression is when the right 'first accrued'. In this case, the cause of action for the first time arose when there was contest between the parties with respect to mutation of the property of Sh. Deva Singh.

4. Decision

4.1 Keeping in view aforesaid discussion, there is no ground to interfere with the findings of fact arrived at by the First Appellate Court.

4.2 The appeal stands dismissed.

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

(ANIL KSHETARPAL)
JUDGE

02.08.2024

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	Whether Reportable :	Yes	No