

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i) CR-2412-2022 (O&M)

Harjinder Singh and another
...Petitioners

Versus

Jarnail Singh and others
...Respondents

(ii) CR-6124-2022 (O&M)

Jarnail Singh and others
...Petitioners

Versus

Harjinder Singh and another
...Respondents

Date of Decision: January 25, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.K.P.S.Virk and Mr.Parvesh Malik, Advocates
for the petitioners (in CR-2412-2022)and
for the respondents (in CR-6124-2022).

Mr.Kamal Sharma, Advocate
for the petitioners (in CR-6124-2022) and
for the respondents (in CR-2412-2022).

ARCHANA PURI, J.

Challenge in the present revision petitions is to the order dated
31.05.2022 passed by learned Addl. District Judge, whereby, an appeal filed

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by the defendants to challenge the order dated 10.12.2021, with regard to order of status quo of alienation and possession passed by learned Civil Judge (Junior Division), was partly allowed and status quo regarding alienation was vacated.

For the convenience of discussion, the parties are referred to as making appearance before learned Courts below.

The material facts, as culled out from the paperbook, are as follows:-

That, initially, the plaintiffs Harjinder Singh and Simranjeet Singh had filed a suit against Jarnail Singh and other defendants, thereby, seeking declaration to the effect that the plaintiffs and the defendants are joint owners in possession in equal shares being co-parceners of joint Hindu family property, as detailed in the head note of the plaint. Besides the same, also challenged the transfer deed bearing No.2567 dated 24.09.2021, which was executed by defendant No.1-Jarnail Singh, in favour of his daughter Balvinder Kaur-defendant No.2 and further also sought consequential relief to restrain defendant No.2 from further alienating the suit property and changing the nature of the suit land and also from disturbing the joint possession of the plaintiffs, over the suit land.

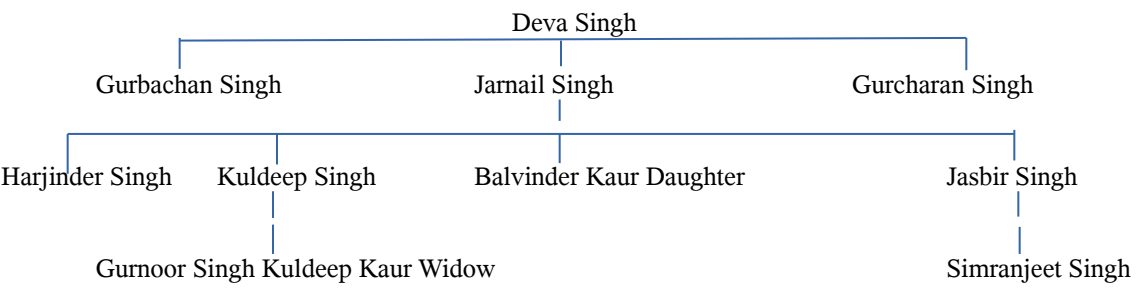
Along with the suit, an application under Order 39 Rule 1 and 2 CPC was filed and after hearing learned counsel for the parties, learned Civil Judge (Junior Division) had ordered the parties to maintain status quo, qua alienation as well as possession.

Feeling aggrieved by the aforesaid order, the defendants had

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filed an appeal before learned lower Appellate Court and vide impugned order dated 31.05.2022, the appeal was partly allowed and the order passed by learned Court below, vis-a-vis, status quo qua alienation was set aside, though maintaining the status quo regarding joint possession.

To understand the relationship existing between the parties, the pedigree table, as depicted in the plaint, is reproduced, as herein given:-



From the aforesaid pedigree table, it is evident that plaintiff Harjinder Singh is son of Jarnail Singh s/o Deva Singh and Simranjeet Singh is son of Jasbir Singh s/o Jarnail Singh. Balvinder Kaur-defendant No.1 is daughter of Jarnail Singh-defendant No.2 and Kuldeep Singh is deceased son of Jarnail Singh, who is now represented through his LRs namely Gurnoor Singh and Kuldeep Kaur.

The case set up by the plaintiffs in the plaint is that Deva Singh, grand father of plaintiff No.1 was allotted ancestral land, in lieu of the land situated in West Punjab, in village Kinana, Tehsil Jind. Said Deva Singh died on 25.12.1970. After selling the ancestral land, defendant No.1 along with his sons Harjinder Singh, Jasbir Singh and Kuldeep Singh had jointly purchased the land mentioned in the head note of the plaint in village Anchra Khurd, in the name of defendant No.1, as defendant No.1 was Karta of the joint Hindu family. The land was purchased from the income of joint

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Hindu family property. The land is now jointly owned and possessed by the parties to the suit. However, defendant No.1-Jarnail Singh, during the pendency of the suit for injunction, initially, filed by him, had transferred the suit land in favour of defendant No.1-Balvinder Kaur, vide transfer deed bearing No.2567 dated 24.09.2021 and on this account, that suit was withdrawn, keeping in view the execution of the transfer deed and thereafter, the present suit was filed by the plaintiffs, to assert their right to the property being ancestral property and also to challenge the transfer deed bearing No.2567 dated 24.09.2021.

However, it is pertinent to mention that ancestral nature of the suit property, as asserted, was denied by the defendants.

After hearing learned counsel for the parties, on the application under Order 39 Rule 1 and 2 CPC, learned Court below, while making an observation that in the transfer deed and jamabandi for the year 2019-20, defendant No.1 is shown to be owner of the suit land and there is no record to show about the nature of the suit land, being ancestral or self-acquired, had further observed that it is a matter of evidence, which can be proved by leading evidence by both the parties, about nature of the suit land, whether it is ancestral or self-acquired and on this account, in the interest of justice, had directed both the parties to maintain status quo qua alienation and possession over the suit land, till the final decision of the case.

As observed aforesaid, an appeal was filed by the defendants. However, in the appeal, learned lower Appellate Court had modified the order of status quo, as passed by learned lower Court and partly allowed the

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appeal, thereby, vacating the order of status quo, qua alienation of the suit property. However, order of status quo, with regard to joint possession was upheld. In view of the aforesaid terms, the appeal was partly allowed and partly dismissed, without any order of costs.

Feeling aggrieved, the present revision petitions have been filed by the rival parties. **CR-2412-2022** has been filed by the plaintiffs to challenge the impugned order, whereby, status quo qua alienation has been vacated, whereas, **CR-6124-2022** has been filed by the defendants to challenge the impugned order, whereby, status quo qua possession has been upheld.

It is submitted by learned counsel for the plaintiffs that the suit property is joint Hindu family property and the plaintiffs as well as the defendants are joint owners in possession, in equal shares, being coparceners and therefore, the transfer deed is illegal and void. To so substantiate, learned counsel for the plaintiffs has drawn the attention to the various mutations of the land, existing in the name of Deva Singh, predecessor-in-interest of the present plaintiffs as well as defendants and the succeeding mutations, which are Annexures P-5 to P-14.

On the basis thereof, it is submitted that initially, the land was in the name of Deva Singh and the mutation was sanctioned in his name and furthermore, after his death, it came to be inherited by widow Sant Kaur and sons, namely, Gurbachan Singh, Jarnail Singh and Gurcharan Singh, in equal four shares. These two mutations Annexures P-5 and P-6, as such, have also not been disputed by learned counsel for the defendants. Further,

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reliance has also been placed by learned counsel for the plaintiffs on the other mutations, to lay emphasis that the property, which came into the hands from Jarnail Singh, from his forefather, was sold and from the sale proceeds, the land in other village was purchased. Since, the land was purchased from the sale proceeds of joint Hindu family property, therefore, the property in question now, also continues to be joint Hindu family property.

However, close perusal of the mutations, so coming on record as Annexures P-5 to P-14, though, do reveal about the property having come from Deva Singh to Jarnail Singh and from Jarnail Singh to have been succeeded by his daughter and sons and also depict about property having purchased by Jarnail Singh thereafter, but however, the simple fact of purchase having made by Jarnail Singh, does not *ipso facto*, reveal about the property to have been purchased with the sale proceeds of joint Hindu family property. It has been correctly observed by learned lower Appellate Court about there to be no document coming forth to establish about the property having purchased from the joint Hindu family funds.

In the given circumstances, it is also further pertinent to mention that from the perusal of the impugned order, it is evident that transfer deed was executed by Jarnail Singh, in favour of plaintiffs, namely Harjinder Singh, Simranjeet Singh and Gurnoor Singh son of Kuldeep Singh (deceased son of Jarnail Singh) on 04.06.2021. However, the said transfer, as such, has not been disclosed by the plaintiffs, while filing the suit in hand, in the month of October 2021. However, the said transfer deed has

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been placed on record by the defendants, copy whereof is Annexure R-1. Perusal of the same reveals that this transfer deed related to the land measuring 26 Kanals 16 Marlas, being 536/800 share of the land measuring 40 Kanals 0 Marla, comprised in Khewat No.228, Khata No.227, vide jamabandi for the year 2014-15, situated in the revenue estate of village Anchra Khurd. This transfer deed also relates to the land situated in village Anchra Khurd, where the suit land is also situated.

Before proceeding further, it is also pertinent to mention that the transfer deed, which is now challenge by the plaintiffs in the suit in hand, has also been placed on record, copy whereof is Annexure R-2 and perusal of the same reveals that vide the same, Jarnail Singh had transferred the land measuring 35 Kanals 2 Marlas, i.e. 5 Kanals 4 Marlas being 13/100 share of the land measuring 40 Kanals 0 Marlas, comprised in Khewat No.255, Khata No.303, Kite 5 and land measuring 29 Kanals 8 Marla being $\frac{1}{2}$ share of the land measuring 59 Kanals 16 Marlas, comprised in Khewat No.382, Khata No.453 Kite 8, vide jamabandi for the year 2019-20. It is also half share of the land of village Anchra Khurd.

Close perusal of both Annexures R-1 and R-2 reveals that nowhere it is stated by Jarnail Singh, who had transferred the said land, about the same to have been purchased by him, in pursuance of the sale proceeds of sale of joint Hindu family property. Rather, both these transfer deeds state about Jarnail Singh, to be owner in possession, meaning thereby, Jarnail Singh was owner in his own capacity.

On query by the Court, it was submitted by learned counsel for

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the plaintiffs that this is land, which was purchased from the sale proceeds of the ancestral land. If it be so, it is pertinent to mention that transfer deed was also executed by Jarnail Singh-defendant No.1, in favour of his sons Harjinder Singh and grandsons Simranjeet Singh and Gurnoor Singh, who are sons of his deceased sons. This transfer deed was not disclosed by the plaintiffs, in the suit in hand. If it be so, it has been rightly observed by learned lower Appellate Court about their to be suppression of material fact by the plaintiffs, at the time of filing of the suit.

When so questioned, learned counsel for the plaintiffs has submitted that they had not challenged the right of some property to be given to Balvinder Kaur, daughter of Jarnail Singh by Jarnail Singh, but however, the extent of the property, so given to Balvinder Kaur, is much more than her entitlement in the joint Hindu family property. However, the submission, so made, is without any basis. Nowhere, in the plaint, the plaintiffs, in fact had disclosed about the transfer deed in their favour and also about having grievance vis-a-vis, transfer deed in question, on account of extent of land, having give more to Balvinder Kaur, than her entitlement, on account of property, being ancestral.

In the given circumstances, it has been correctly observed by learned lower Appellate Court that there is nothing coming on record, to prove the ancestral nature of the suit property or that the property is joint Hindu family property. In the revenue record, the property is reflected in the name of Jarnail Singh, which, for all purposes, ought to be taken as personal property of Jarnail Singh. If it be so, Jarnail Singh-defendant No.1,

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was within his right to execute transfer deed, in favour of his daughter Balvinder Kaur-defendant No.2, to any extent.

Such being the position, learned lower Appellate Court has rightly vacated the status quo order qua alienation, due to deficient material coming on record, to prove the nature of the suit property and more particularly, when the fact of transfer deed already executed by Jarnail Singh, in favour of the plaintiffs, has been suppressed by them.

In the light of the same, there is no illegality or irregularity in the impugned order passed by learned lower Appellate Court, vis-a-vis, vacation of status quo, qua alienation and the same does not warrant any interference.

However, looking at the nature of the property, as spelt out from the material on record and rights of the parties, vis-a-vis, the same and more particularly, on account of suppression of the transfer deed, having bearing on the rider, to be put on the rights of the defendants, at the instance of the plaintiffs, at the time of filing of the suit, the plaintiffs are also not entitled to status quo, qua possession.

Consequently, in view of the aforesaid terms, the revision petition filed by the plaintiffs i.e. CR-2412-2022 stands dismissed, whereas, revision petition filed by the defendants i.e. CR-6124-2022 stands allowed.

January 25, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No