

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I.

RSA-4052-2019 (O&M)

Jagjit Singh

Appellant

Vs.

Harjit Singh Khalsa and Others

Respondents

II.

RSA-4067-2019 (O&M)

Jagjit Singh

Appellant

Vs.

Mohinder Singh and Others

Respondents

Reserved on: 31.07.2024
Pronounced on: 27.08.2024

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. R.S. Mamli, Advocate for the
appellant in both the appeals.

Mr. J.S. Mehndiratta and Ms. Jyotnoor Kaur Sethi, Advocates
for the respondents.

DEEPAK GUPTA, J.

Sr. N:	Before Trial Court (Decided on 12.10.2015)	Before First Appellate Court (Decided on 16.05.2019)	Before this court
1	CS N: 170-CS-2011/2013	CA N: 178 of 2015	RSA N: 4052-2019
2	CS N: 171-CS-2011/2013	CA N: 179 of 2015	RSA N: 4067-2019

This order shall dispose of two Regular Second Appeals titled above, as these are between the same parties and arising out of the dispute relating to the same property in the following circumstances.

2. Property in dispute is House No.559, admeasuring 39.3' x 42', situated at Santpura Road near M.L.N. College, Yamuna Nagar, shown by letters 'ABCD' in site plan Ex.P7. It was owned by Mohinder Singh, who has four sons and two daughters. Four sons are Jagjit Singh, Harjit Singh, Satbir Singh and



Manjit Singh. Two of these sons namely Harjit and Satbir are of unsound mind and 75% handicapped. In Civil Suit No.625 of 2009 titled 'Harjit Singh & other vs. Mohinder Singh' filed on 30.04.2009, Mohinder Singh suffered a consent decree dated 24.05.2011 passed by the civil Judge, Yamuna Nagar, in respect of the said house in favour of his two mentally retarded sons namely Harjit and Satbir, who had filed this suit through their mother/next friend Smt. Joginder Kaur.

3.1 Both these sons Harjit and Satbir (*now respondents N: 1 & 2 in RSA N: 4052 of 2019 and respondents N: 2 & 3 in RSA N: 4067 of 2019*), then filed civil suit No.170-CS of 2011/13 (*filed on 26.09.2011*) through their mother Smt. Joginder Kaur against their brother Jagjit (*present appellant in the two appeals*) and two others, who are Jagjit's wife's brothers (*now respondents N: 3 & 4 in RSA N: 4052 of 2019*), seeking a decree of permanent injunction. Claiming to be owners in possession of the suit property, with which the defendants had no concern and alleging interference in their possession, they prayed for a decree of permanent injunction to restrain the defendants from interfering in their possession and also from forcibly dispossessing them from the suit property and from causing any damage to the property.

3.2 Defendant Nos.2 & 3 of that suit i.e. brothers of wife of Jagjit pleaded that they had no concern with the suit property. However, as per them, their sister was married to Jagjit Singh and was living with defendants No.1 in the Eastern portion of that house along with her children.

3.3 Defendant No.1 Jagjit Singh in his written statement denied the plaintiffs to be owner of the suit property. Rather, he claimed that he was owner of a specific portion of the suit property. It was asserted by him that the entire property was earlier owned by Shri Gurdial Singh, i.e. father of Mohinder Singh and that Mohinder Singh had inherited the same along with his brother Parhlad Singh. Mohinder Singh then became owner of the property in question being Karta of joint Hindu family and this way, the suit property is co-parcenary in na-



ture of both the parties and also of their brother Manjit Singh, though in the municipal record, it was standing in the name of their father i.e. Mohinder Singh. It was further claimed by him that he along with plaintiffs and other family members were residing in the house in question since birth. As some disputes regarding transfer of the ownership of the portion, in which he is in possession were taking place, a family settlement had been arrived on 01.03.2010, in which the portion under his possession, had been given to him and in this regard, his father Mohinder Singh had executed an affidavit on 04.03.2010, by virtue of which, he (Jagjit Singh) became exclusive owner of the said portion. He further submitted that on the same day, an intervening wall was raised and portion in his possession was separated from other property. He also obtained a separate electricity connection besides separate ration card, gas connection etc. in respect of the said portion. He further pleaded that since he was serving at Kanpur, whereas his wife and children are residing in this portion, so taking benefit of his absence, his father Mohinder Singh started interfering in actual possession of his portion and broke the intervening wall at some points on 15.10.2021 with an intention to encroach that portion, compelling his wife to move an application before the Police Station, City Yamuna Nagar. Police called both the parties and it is at that place that Mohinder Singh disclosed that he had suffered a decree dated 24.05.2011 in favour of plaintiffs regarding the entire house, by virtue of which they had become owner of the same. Defendant No.1 Jagjit Singh alleged the said judgment and decree dated 24.05.2011 to be illegal, null & void and not binding upon his rights. He further submitted that plaintiffs did not have the right to interfere in the portion, in which he was in possession and prayed for dismissal of the suit.

4.1 The abovesaid defendant No.1 Jagjit Singh of Civil Suit No.170 of 2011/13, filed a separate suit against his father Mohinder Singh (*respondent N: 1 RSA N: 4067 of 2019*) and two brothers Harjit Singh and Satbir Singh bearing Civil Suit No.171 of 2011/2013 (*filed on 01.11.2011*) in respect of the Eastern portion of the house to the extent of 15' x 42', shown by letters 'ABEFGH' in the



site plan Ex.D2, taking the same stand, as in written statement of Civil Suit No.170 of 2011. He prayed for a decree of declaration that he is owner in possession of the portion measuring 15' x 42' being part of House No.559. He further prayed for decree of declaration that decree dated 24.05.2011 passed by the Court of learned Civil Judge (Junior Division), Jagadhri in case No.625 of 2009 titled 'Harjit Singh etc. v. Mohinder Singh' was null illegal and void and not binding upon his rights. He also prayed for a decree of permanent injunction to restrain the defendants of the house from interfering in his possession in any manner and also to restrain them from creating any third party interest over the portion, on which he was in possession.

4.2 In the written statement of this suit, defendant Mohinder Singh denied the suit property to be ancestral co-parcenary property and claimed that it was his self-acquired property and took the stand that he could/can deal with the same in any manner he liked. According to him, the suit property along with other property was earlier owned by his mother Smt. Surjit Kaur, who during her lifetime had divided the same amongst her two sons i.e. defendant No.1 Mohinder Singh & Prahlad Singh and it is how that suit property was given to him by Smt. Surjit Kaur and adjoining property was given to Parhlad Singh. He denied that any portion of the house was given to plaintiff of the case Jagjit Singh. He further claimed that property was now owned by defendant Nos.2 & 3 of the suit i.e. Harjit and Satbir by virtue of the decree dated 24.05.2011 in their favour.

5. Separate issues were framed in both the cases but later on, both the suits were consolidated. After taking evidence produced by both the parties, it was held by the trial Court that suit property was not proved to be co-parcenary property in the hands of Mohinder Singh and rather, it was his self-acquired property. It was further found that although Mohinder Singh had admitted his signature on the affidavit dated 04.03.2010 Ex.D1 but it did not convey any right, title or interest in favour of Jagjit Singh regarding any portion of the suit property and therefore, he could not claim title over any portion of suit

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property on the basis of that affidavit. It was also noticed that no family settlement dated 01.03.2010 as claimed by Jagjit Singh was referred in the affidavit. It was further held by the trial Court that Harjit and Satbir i.e. plaintiffs of civil suit No.170 of 2011 had become owner in possession of suit property by virtue of consent decree dated 24.05.2011 in their favour and that defendant Jagjit Singh had failed to prove that said decree was null and void for any reason whatsoever. Consequent to the findings on these main issues, the suit filed by Harjit & Surjit was decreed for permanent injunction; whereas suit filed by Jagjit Singh for declaration regarding any portion of suit property or regarding declaring the decree in favour of Harjit and Surjit to be null and void, was dismissed. Common judgment and decree dated 12.10.2015 was passed by the Court of learned Civil Judge (Junior Division), Yamuna Nagar accordingly regarding both the suits.

6. Two separate appeals were filed by Jagjit Singh i.e. defendant No.1 of the Civil Suit No.170 of 2011; and plaintiff of the Civil Suit No.171 of 2011/2013. Civil appeal No.178 of 2015 against the decreeing of the suit No.170 of 2011-13; and Civil Appeal No.179 of 2015 against dismissal of Civil Suit No.171 of 2011/2013. Both these appeals were dismissed by learned Additional District Judge, Yamuna Nagar vide his common judgment & decree dated 16.05.2019, by upholding the findings of the trial Court on all the issues.

7. It is with these background facts that RSA-4052-2019 has been filed against the dismissal of the appeal No.178 of 2015 arising out of Civil Suit No.170 of 2011/2013; whereas, RSA-4067-2019 has been filed against the judgment passed in Civil Appeal No.179 of 2015 arising out of Civil Suit No.171 of 2011.

8.1 It is contended by learned counsel that courts below have failed to appreciate the evidence on record in right perspective, in as much as, Mohinder Singh along with his four sons were the members of the Joint Hindu Family and Mohinder Singh was the Karta thereof and there was admission of Mohinder Singh during the proceedings of Civil Suit No.625 of 2009 to the effect that suit



property was co-parcenary property, of which he was the Karta.

8.2 Besides, Mohinder Singh during his testimony as PW-1 admitted his signature on affidavit Ex.D1 dated 04.03.2010 and therefore, he was estopped from denying the contents of said affidavit by virtue of which a portion of the disputed house to the extent of 15' x 42' was given to the appellant-Jagjit Singh. Learned counsel has also drawn attention towards the cross-examination of Mohinder Singh, in which he admitted that Jagjit Singh was given the possession of separate portion and the same was separated by raising a wall in between the two portions and in the portion given to Jagjit Singh, he was residing with his family and in which he had taken a separate electricity connection. Learned counsel contends that since the affidavit Ex.D1 was based upon a family settlement effected on 01.03.2010, therefore, it did not require registration and so, conveyed a valid title regarding that portion in favour of the appellant- Jagjit Singh. Ld. Counsel refers to ***K.K. Puri (deceased) represented by LRs Vs. Smt. Krishna Puri and ors., AIR 2008 (P&H) 23***

8.3 Further contention of learned counsel is that the consent decree dated 24.05.2011 is null and void, as neither the appellant Jagjit Singh nor any other family members were joined in any alleged family settlement. Besides, no family settlement could have taken place with the two plaintiffs of that case i.e. Harjit and Satir, who were of unsound mind. It is also the contention that consent decree regarding co-parcenary property, could not have been suffered.

8.4 It is further the contention of learned counsel that even if it be assumed that affidavit Ex.D1 did not convey title regarding any portion of suit property in favour of appellant Jagjit Singh, so is the case with the decree dated 24.05.2011 and that since the civil suit N: CS-170-2011/13 was filed by Harjit & Surjit only for decree of permanent injunction, whereas possession over a portion of the suit house of the defendant of that case Jagjit was proved, therefore, decree of permanent injunction could not have been passed. Learned counsel contends that Harjit and Surjit i.e. plaintiffs of Civil Suit No.170 of 2011 are re-



quired to file a separate suit for possession.

8.5 With all these submissions, prayer is made for setting aside the impugned judgment and decree passed by the Courts below and to allow the two appeals.

9. On the other hand, learned counsel for the respondents, has defended the impugned judgment & decrees passed by the Courts below in both the suits. It is argued that there is no reason to disturb the concurrent findings of facts as recorded by the Courts below, as suit property has been found to be self-acquired in the hands of Mohinder Singh in the absence of any proof to the contrary. Prayer is made for dismissal of the appeals.

10. I have considered submissions of both the sides and have perused the record carefully.

11. As far as nature of the suit property is concerned, it is not at all proved to be a co-parcenary property. In order to prove a property to be ancestral co-parcenary property, it is necessary that it should have come in the hands of the holder from his three immediate ascendants i.e. father, father's father or father's father's father.

12. In the present case, as per the testimony of Mohinder Singh (PW-1), the property in dispute along with other property was earlier owned by his mother Smt. Surjit Kaur, who during her lifetime had divided the same between her two sons i.e. Mohinder Singh and Prahlad Singh and it is how that the adjoining property had come to the share of Prahlad Singh and the suit property came to his share i.e., Mohinder Singh. There is no evidence to rebut this statement of PW-1 Mohinder Singh. Jagjit Singh, who is a defendant in civil suit No.170 of 2011; and plaintiff in Civil Suit No.171 of 2011 claimed the suit property to be co-parcenary property, but failed to produce any evidence to support the contention regarding nature of the suit property as co-parcenary or to the effect that suit property was earlier owned by father, father's father or father's



father's father of Mohinder Singh.

13. In the absence of any such evidence, the courts below rightly came to the conclusion that merely because an admission was made by Mohinder Singh during the proceedings of Civil Suit No.625 of 2009 titled 'Harjit Singh etc. v. Mohinder Singh' that he was Karta of joint Hindu Family, will be of no effect. As such, findings of the Courts below to the effect that suit property was self-acquired property in the hands of Mohinder Singh, is hereby upheld.

14. The next question is whether the affidavit dated 04.03.2010 Ex.D1 conveys any right, title or interest regarding any portion of the suit property in favour of appellant Jagjit Singh. As per the case set up by Jagjit Singh in his pleadings and as testified by him before the Court as DW-1, dispute had arisen between him and father Mohinder Singh regarding transfer of ownership in January, 2010 and to settle the dispute, a family settlement was arrived at between them and other family members on 1st March, 2010, in which Eastern portion of the house, which was already in his possession, was given to him and he was made exclusive owner thereof and in this regard, an affidavit dated 04.03.2010 was executed in the shape of memorandum and it is consequent to the same that an intervening wall was raised dividing the two portions.

15. Although Mohinder Singh in his testimony as PW-1 admits his signature on the affidavit Ex.D1 and also the fact that an intervening wall had been raised but this in itself is not sufficient to create title in favour of Jagjit Singh in respect of the Eastern portion of the suit property of the house as claimed by him. First of all, as rightly noticed by the Courts below, there is no mention of any alleged family settlement dated 01.03.2010 in the affidavit Ex.D1. Further, the language of the affidavit would convey that it is in order to put an end to the disputes amongst the family that a portion of the house was given to Jagjit for his user, inasmuch as in the last paragraph of the affidavit, it is mentioned that after this, he will not create any hindrance in any manner to him (deponent) Mohinder or his wife and that after their death, the house shall be divided



amongst all the legal heirs.

16. Had the intention of Mohinder Singh been to convey title in any portion of the suit property in favour of Jagjit Singh, there was absolutely no reason to mention in this affidavit that after his death and the death of his wife, the property shall go to all the legal heirs. This in itself conveys the intention of deponent Mohinder Singh that he did not want to convey any title of the suit property in favour of Jagjit Singh.

17. Still further, the affidavit is absolutely no legal mode under the Transfer Property Act to convey the title in the immovable property, as it is neither sale, nor gift nor Will. Further, as noticed that there is no reference of any prior family settlement, it means it was in *presentee* and not to recognize any pre-existing rights. Even otherwise, the property being self-acquired of Mohinder Singh, so appellant Jagjit Singh did not have any pre-existing right or title in the suit property. As such, the affidavit being unregistered, it cannot convey any right, title or interest regarding any portion of the suit property in favour of Jagjit Singh.

18.1 In order to contend that affidavit Ex.D1 did not require any registration in order to convey a title, learned counsel for the appellant has referred to ***K.K. Puri (deceased) represented by LRs Vs. Smt. Krishna Puri and ors."*** (*supra*). It is argued that in case relinquishment of share is done in favour of one member of the family by way of affidavit, the same is permissible and the affidavit does not require registration.

18.2 The contention is devoid of any merit. In ***K.K. Puri Vs. Smt. Krishna Puri*** referred by learned counsel, one Lal Chand Puri was owner of a house constructed on plot No.65, Sector 16-A, Chandigarh. He died intestate on 04.06.1961 leaving behind his widow Smt. Tarapuri, son K.K. Puri and two daughters Krishna Puri and Meenakshi Bansal. After the death of Lal Chand Puri, his son and daughters sworn an affidavit dated 19.01.1962 relinquishing their rights and interest in the house in favour of their mother Smt. Tarapuri and on



the basis of that affidavit, the Chandigarh Administration transferred the property by executing a conveyance deed dated 13.05.1968 in favour of Smt. Tarapuri. Later on, Smt. Tarapuri filed a suit of permanent injunction restraining her son K.K. Puri from interfering in her possession claiming her absolute right over the house in question on the strength of conveyance deed dated 13.05.1968. Son K.K. Puri challenged the affidavit to have not conveyed any title in favour of her mother. He also pointed out certain defects in the affidavit. It was in these background facts that it was held by this Court that affidavit only conveyed the intention of the members of the family to relinquish their rights in favour of their mother. The said affidavit was not a document, which by itself extinguished or created any rights and therefore, non-registration of the document or the defective verification of affidavit was of no consequence. It was only a mode of communication to Chandigarh Administration, whereby the other members of the family had conveyed their intention not to claim title over the property in question and requested for transferring the rights in favour of their mother Smt. Tarapuri and that Chandigarh Administration accepted this mode and consequently, executed a valid conveyance deed in favour of Smt. Tarapuri. As is apparent that Tarapuri became owner by way of a conveyance deed executed by Chandigarh Administration based on affidavit.

18.3 Facts of present case are distinguishable. In the present case, the appellant claims right and title over the property in dispute only on the basis of affidavit only Ex.D1, which is of no legal consequence so as to convey any right title or interest in his favour. As such, the appellant cannot claim any right whatsoever in the suit property on the basis of the said affidavit Ex.D1 and so, the contention of learned counsel for the appellant is hereby rejected.

19. Coming to the judgment & decree dated 24.05.2011 suffered by Mohinder Singh in favour of his two sons Satbir & Harjit in Civil Suit No.625 of 2009, the perusal of the plaint of that suit Ex.D4 will reveal that it was pleaded by the plaintiffs of that case i.e. Harjit & Satbir through their mother/natural guardian/next friend Smt. Joginder Kaur that they were living with defendant



Mohinder Singh, having no source of income of their own. They were neither able to bring up themselves being handicapped nor were capable to do any work. In order to avoid any future dispute and also to keep & maintain the harmony in the family, a family settlement took place on 15.12.2008, as per which property in dispute i.e. house was given to them (Harjit and Surjit) in equal share, in order to secure their future, as the other sons of the defendant Mohinder were happy with their families and doing business being settled. The said contentions made by Harjit and Satbir were admitted by Mohinder Singh in his written statement (copy Ex.D5) and based upon the same and the compromise Ex.D6, the suit was decreed on 24.05.2011 vide judgment Ex.D7 and decree dated Ex.D8.

20. Mohinder Singh was the absolute owner of the suit property. Mohinder Singh being father of two mentally retarded sons, who were incapable of maintaining themselves or to do any job, wanted to secure their future and it is in order to avoid any future dispute and also to bring harmony in the family and by considering the fact that his other two sons were capable and settled in their business with their respective families, suffered the said decree in favour of his said two sons. As said Mohinder Singh was the absolute owner of the house in question, therefore, he was at liberty to deal with the same, in the manner he liked. As such, the consent decree suffered by him in favour of his two mentally retarded sons based upon an earlier family settlement of December, 2008, cannot be said to be invalid for any reason whatsoever. As such, this Court does not find any reason to disturb the concurrent findings of facts as recorded by the Courts below, regarding the validity of the judgment and decree dated 24.05.2011 passed in Civil Suit No.625 of 2009 by Ld. Civil Judge (Jr. Divn.), Yamuna Nagar.

21. Consequent to the aforesaid discussion, it is held that Civil Suit No.171 of 2011/2013, has been rightly dismissed by the Courts below, as far as the relief of seeking decree for declaration sought by appellant Jagjit Singh is concerned. It has been rightly held by the courts below that said Jagjit Singh is



neither the owner of any portion of the house i.e. eastern portion, regarding which he had sought the declaration; nor the judgment & decree dated 24.05.2011 passed in Civil Suit No.625 of 2009 titled 'Harjit vs. Mohinder', could be said to be null & void. As such, declaration to that effect has been rightly declined.

22. However, said Jagjit Singh in Civil Suit No.171 of 2011/2013 had also sought the relief of injunction, not to interfere in his possession over the Eastern portion of the entire house, in which he was in possession i.e. to the extent of 15' x 42', shown by letters 'ABEFGH' in the site plan Ex.D2. On the other hand, in Civil Suit No.170 of 2011-2013, plaintiffs Harjit & Satbir had sought decree of injunction against Jagjit in respect of the entire house measuring 39.3' x 42', shown by letters 'ABCD' in site plan Ex.P7. Mohinder Singh in his testimony as PW-1 admitted the possession of the Jagjit in the eastern portion of the house and that even the intervening wall was raised between the two portions. He admitted the correctness of site plan Ex.D2. Separate electricity connection, gas connections, ration card etc. were taken by Jagjit. Passage to this eastern portion, in which Jagjit is in possession, is separate, as has come in testimony of PW1. In view of this evidence, this Court is of the view that said Jagjit Singh- appellant cannot be dispossessed from that eastern portion of the house except in due course of law.

23. To conclude, though by virtue of the decree dated 24.5.2011 passed in Civil Suit No.625 of 2009, Harjit & Satbir i.e. plaintiffs of Civil Suit No.170 of 2011/2013 are the owners of the entire house, but their suit for permanent injunction cannot be decreed in respect of the entire house. They are entitled to the decree of permanent injunction only in respect of the Western portion of the house i.e. except the Eastern portion to the extent of 15' x 42', which is in possession of the appellant- Jagjit Singh. However, at the same time, it is made clear that these plaintiffs Harjit & Satbir are at liberty to avail legal remedy as available to them in accordance with law, so as to seek possession of the abovesaid eastern portion of the house, which is presently in possession of

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appellant Jagjit Singh, by following due course of law including the remedy of seeking the user charges/ mesne profits regarding that portion from Jagjit Singh

24. Consequently, the present appeals are partly accepted to the extent that civil suit No.170 of 2011/2013 is dismissed qua the Eastern portion of the house i.e. 15’ x 42’ as reflected in site plan Ex.D2, which is in possession of defendant of that suit i.e. appellant- Jagjit Singh. Said suit is decreed qua remaining western portion of the house. Civil Suit No.171 of 2011-2013 is partly decreed to the extent that a decree of injunction is passed in favour of appellant- Jagjit Singh to the effect that defendants of that case will not interfere in his possession except in due course of law in eastern portion of the house i.e. 15’ x 42’ as reflected in site plan Ex.D2. For removal of doubts, it is again made clear that Harjit & Satbir being owner of the entire suit property, will be entitled to seek possession of the portion under the possession of the appellant, by following due course of law.

25. Both the appeals are disposed of accordingly. Photocopy of this judgment be placed on the file of connected case.

27.08.2024
Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No