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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 07.11.2024

RSA-1546-2013 (O&M)

MAJOR SINGH

....Appellant

Versus

ANGREZ SINGH AND ORS.

...Respondents

RSA-51-2002

MAJOR SINGH

....Appellant

Versus

SUKHMANDER SINGH AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Dilraj S. Brar, Advocate for the appellant(s).

Ms. Kusum Raj, Advocate for
Mr. ADS Jattana, Advocate for respondent No.1.

Mr. Rajesh Gupta, Advocate
for respondents No.3 & 4 in RSA-1546-2013.

Mr. Vikrant Koundal, Advocate for
Mr. M.K. Garg, Advocate
for respondent Nos. 3 & 4 in RSA-51-2002.

PANKAJ JAIN, J. (ORAL)

By this common order, I intend to dispose off the afore-captioned two Regular Second Appeals preferred by the plaintiff.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the plaintiff and the respondents as the defendants.



3. Plaintiff filed suit seeking declaration to the effect that sale deed dated 11th of October, 1999 executed by Sukhmander Singh in favour of Angrez Singh was illegal and not binding on the rights of the plaintiff, the same being ancestral property in the hands of Sukhmander Singh.

4. Defendants claimed that Sukhmander Singh became owner of the property on the strength of a Will executed by Arjan Singh dated 9th of February, 1977. There is no challenge to the Will raised in the suit.

5. In order to prove that the property was coparcenary the plaintiff was required to prove that the property devolved upon Sukhmander Singh by survivorship. Trite it is that once a property is acquired by way of succession, the same loses its ancestral character. Reliance can be placed upon law laid down by the Apex Court in the case of **Commissioner of Wealth Tax, Kanpur etc. vs. Chander Sen Etc. 1986 (3) SCC 567**. The same was further relied upon by Supreme Court in the case of **Uttam Vs. Saubhag Singh & ors. 2016 4 SCC 68** holding as under :

“20. Some other judgments were cited before us for the proposition that joint family property continues as such even with a sole surviving coparcener, and if a son is born to such coparcener thereafter, the joint family property continues as such, there being no hiatus merely by virtue of the fact there is a sole surviving coparcener. **Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe (1988) 2 SCC 126**, **Sheela Devi v. Lal Chand, 2006(4) RCR (Civil) 912 : (2006) 8 SCC 581**, and **Rohit Chauhan v. Surinder Singh 2013(4) RCR (Civil) 40 : 2013(4) Recent Apex Judgments (RAJ) 532 : (2013) 9 SCC 419**, were cited for this purpose. None of these judgments would take the appellant any



further in view of the fact that in none of them is there any consideration of the effect of Sections 4, 8 and 19 of the Hindu Succession Act. The law, therefore, insofar as it applies to joint family property governed by the Mitakshara School, prior to the amendment of 2005, could therefore be summarized as follows:-

(i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).

(ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.

(iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such



property would devolve only by intestacy and not survivorship.

(vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants.”

- 6. Counsel for the appellant is not in position to dispute the fact that till the Will in favour of Sukhmander Singh is dislodged, the property in the hands of Sukhmander Singh will have a status of a self acquired property as the source is inheritance on the basis of the Will and not survivorship.
- 7. In view of above, this Court does not find any reason to interfere in the well reasoned finding of facts recorded by the Courts below. Resultantly, the instant appeals are dismissed.
- 8. A copy of this order be kept on the file of other connected case.
- 9. Pending application(s), if any, shall also stand disposed off.

November 07, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No