

RSA-5127-2021 (O&M)

- 1 -

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

106

RSA-5127-2019 (O&M)

Date of Decision: 27.05.2024.

Krishan Singh

...Appellant.

Versus

Bachittar Singh Kanwar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. K.S. Dadwal, Advocate
for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/
plaintiff against the concurrent findings recorded by both the Courts below
vide which the suit of the plaintiff was dismissed.

2. Brief facts of the case as per plaint are that the plaintiff is son
of defendant No.1 and they form a joint hindu family alongwith Ram Singh,
father of defendant No.1 and grandfather of the plaintiff and are governed
by Mitakshara School of Hindu Law. Shri Ram Singh grandfather of
plaintiff was owner of land measuring 15 kanal 10 marla situated at village
Kotli Khas, Tehsil Mukerian, District Hoshiarpur, comprised in Khewat
No.257, Khatoni No.357, Khasra No.31/21 (2-18), 22(6-10), 38/2 (5-4) and
393 (0-18) and land measuring 20 kanal 4 marlas, situated at village Mirpur

RSA-5127-2021 (O&M)

- 2-

Tehsil Mukerian, District Hoshiarpur and comprised in Khewat No.92, Khatoni No.99, 100, Khasra No.2/6 (3-18), 7/1 (0-10), 14/3 (0-5), 15/1 (1-16), 3//9/1 (0-9), 9/2 (0-14, 10(4-4), 11/1(1-8), 11/2 (5-2) and 12/1 (1-8) which was inherited by him from his father. After death of Ram Singh, mutation of his estate was sanctioned in equal shares as per Hindu Succession Act.

3. Smt. Kesho widow of Ram Singh deceased has died and mutation of her 1/6th share was sanctioned in name of all her heirs as shown in pedigree table made in the plaint. It has been further averred that defendant No.1 alongwith other legal heirs of deceased Ram Singh had sold property detailed in para No.2 of plaint to Kabal Sigh and others by virtue of sale deeds dated 13.12.1994 and 30.12.1994 and mutation No.1798 and 722 have been sanctioned in favour of vendees. Defendant No.1 had purchased suit land as fully detailed and described in head note of plaint by virtue of sale deed dated 05.12.1994 from Bhagat Singh with sale consideration generated out of joint hindu family coparcenary property sold by defendant No.1 alongwith his brothers and brother's son/ daughters which was inherited by them from Ram Singh, Karta of family. Hence, suit land is coparcenary/ ancestral property in hands of defendant No.1, in which plaintiff has acquired titled by birth and defendant No.1 has no right or authority to alienate any part of Hindu Joint Family ancestral coparcenary property, i.e. suit land without any legal necessity and without benefit and welfare of hindu joint family and family estate. Suit land is stated to have never been partitioned amongst Ram Singh, his sons and defendants. It has

RSA-5127-2021 (O&M)

- 3-

been further alleged that during pendency of suit, defendants No.2 to 6 have purchased land by virtue of two sale deeds dated 26.09.2002 and sale deeds dated 12.11.2002, 26.04.2002 and 22.05.2003, which sale deeds are illegal, null and void and ineffective qua rights of the plaintiff being without consideration, without legal necessity and without benefit and welfare of joint estate and against consent of the plaintiff coparcenar, hit by doctrine of lis pendence and are liable to be set aside. Earlier plaintiff had filed a suit for declaration to the effect that suit land is joint hindu family coparcenary property and sale deeds executed by defendant No.1 are illegal and void, but same was withdrawn with permission to file a fresh one on 22.08.2009 and now present suit has been filed. It has also been averred that during pendency of earlier suit, defendants No.2 to 6 have purchased suit land by virtue of sale deeds dated 26.09.2002, 12.11.2002, 26.04.2002 and 22.05.2003. these sale deeds are asserted to be illegal, null and void and ineffective on rights of plaintiff being without consideration, without legal necessity and nor for benefit and welfare of joint estate, against consent of the plaintiff, coparcener and hit by the doctrine of lis pendence and are liable to be set aside.

4. Defendant No.1 filed written statement by taking preliminary objections regarding locus standi; maintainability; not properly valued correctly for purposes of court fee and jurisdiction; barred under Order 23 Rule 1(3) of CPC. It was denied that the plaintiff and defendant No.1 formed any joint hindu family and it was alleged that there residences, landed property and mess are separate since past many years. Defendant

RSA-5127-2021 (O&M)

- 4-

No.1 did not inherit any property from Ram Singh as alleged, rather, defendant No.1 has purchased some land from Bhagat Singh and Puran Singh vide sale deeds dated 22.11.1994, 11.11.1994, 05.12.1994 and 01.06.1973 respectively for which funds and consideration was provided to plaintiff by defendant No.1. It was denied that suit land was ancestral hindu joint family property or it was purchased with joint family funds, rather it was absolute and exclusive property of defendant No.1. The plaintiff is residing separately having his separate property since more than 35 years.

5. Defendants No.2 and 3 also filed written statement on the similar lines. It was also alleged that defendants No.2 and 3 have purchased suit land from defendant No.1 vide sale deeds dated 26.09.2002 and 22.05.2003 for consideration and these sale deeds are legal and valid and binding upon the plaintiff and defendant No.1. It was alleged that they are in possession of the land purchased by them and otherwise they are bonafide purchaser for value and without notice and their sale deeds are protected under Section 41 of the Transfer of Property Act.

6. From the pleadings of the parties following issues were framed:-

1. *Whether plaintiff is entitled to relief of declaration as prayed for? OPP*
2. *Whether plaintiff has no locus standi to file present suit? OPD*
3. *Whether suit of plaintiff is false and frivolous? OPD*
4. *Whether defendant is entitled to specific costs of Rs.25,000/- as prayed for? OPD*
5. *Whether suit of plaintiff has not been valued correctly*

RSA-5127-2021 (O&M)

- 5-

and properly for the purposes of court fee and jurisdiction?

OPD

6. *Relief.*

7. The suit of plaintiff was dismissed by the trial Court, vide judgment and decree dated 28.11.2016. The appeal preferred by the appellant/ plaintiff before the First Appellate Court was dismissed, vide judgment and decree dated 17.07.2019. Hence, the present Regular Second Appeal has been filed by the appellant/plaintiff.

8. Learned counsel for the appellant/ plaintiff has contended that both the Courts below have wrongly held that the ancestral nature of the property has not been proved. The relevant documents placed on record have not been considered. While relying upon the judgment of Hon'ble Supreme Court in *Shyam Narayan Prasad Vs. Krishna Prasad and others, 2018 (3) R.C.R. (Civil) 527* and *Shamkalabai and others Vs. Bhikamsing Kishansing Chouvan, 2014(44) R.C.R. (Civil) 104*, he has argued that the property in dispute was inherited by Gandharav Singh respondent/ defendant No.2 from his father Ram Singh and as per the settled law it was ancestral property in his hands. Respondent/ defendant No.1 had sold the property in dispute which he had acquired after sale of ancestral property, without legal necessity, so the impugned sale deeds are not binding upon the interest of the appellant/ plaintiff and are liable to be set aside. While selling the suit land defendant No.1 Gandharav Singh did not care about welfare of the joint hindu family and he did so without taking consent of the plaintiff. He has submitted that the suit land was ancestral property as it had been purchased by defendant No.1 Gandharv Singh alongwith his brothers and

RSA-5127-2021 (O&M)

- 6-

sisters vide sale deed dated 05.12.1994 from the funds generated out of sale of joint hindu family property of their erstwhile predecessor Ram Singh situated in village Kotli Khas and Mirpur, in which the plaintiff had acquired right by birth.

9. It is well settled proposition of law that the property inherited by a male hindu from his father, father's father and father's father's father, is an ancestral property. So, in order to prove suit land to be ancestral, the plaintiff was required to prove that lands situated in village Kotli Khas and Mirpur was inherited through three descendants and any deviation from the afore referred chain of devolution would disturb the characters of the property being ancestral in nature.

10. It has been held in **Gulab Singh Vs. Mam Chand and others 2009(2) HLR page 221**, that there is no dispute on the legal proposition that property becomes ancestral property if the same is inherited through three descendants i.e. father, father's father and father's father's father. As per Article 223 of the Hindu Law, to prove the ancestral nature of the suit land, it is to be proved on the file that suit land was inherited through three descendants.

11. So to fall within the preview of the ancestral property the succession should be between male hindus and no female should intervene in matter of succession. But in the instant case, property left behind by Ram Singh was succeeded by his widow Keshto Devi, Mohinder Singh, Munshi Ram, Maan Singh, Gandharav Singh (sons) and Chanan Devi (daughter), so obviously this succession was not only among male hindus so as to

RSA-5127-2021 (O&M)

- 7 -

determine nature of property to be ancestral one.

12. No excerpts were produced in the Courts below prepared by Special Kanungo or Patwari Moharrir, so as to prove the ancestral nature of property. Copy of jamabandi Ex.P2 for the year 1998-99, copy of jamabandi Ex.P3 for the year 1963-64, copy of Misal Haqiyat in Urdu along with Punjabi translation Ex.P4 and Ex.P5 copy of mutation No.722 which relate to sale of property by Maan Singh, Gandharav Singh (sons) and Chanan Devi (daughter) of Ram Singh son of Mathra Dass, Katusha Devi (widow) and Puran Singh (son) of Munshi Ram son of Ram Singh, Janak Singh, Angrez Singh (sons), Karmo Devi, Sita Devi and Soma Devi (daughters) of Mohinder Singh son of Ram Singh to Kabal Singh and others have been produced on record. But from these documents it is not proved that Gandharav Singh had inherited property from Ram Singh, his father. As per copy of mutation No.716 Ex.P6, the property owned by Smt. Kashto widow of Ram Singh was succeeded by Mohinder Singh, Gandharav Singh, Maan Singh (sons) and Chanan Devi (daughter) of Kashto widow of Ram Singh and this succession is not from a male Hindu. As has already been observed that the property of Ram Singh had not devolved upon male Hindu alone, rather his widow and daughter had also succeeded his estate, so the nature of property does not remain to be ancestral one.

13. Otherwise also, there is no evidence worth the name on record that the suit land had been purchased by defendant No.1 vide sale deed dated 05.12.1994, from the sale proceeds of their ancestral joint hindu family property situated in village Kotli Khas and Mirpur. The case law

RSA-5127-2021 (O&M)

- 8-

cited by learned counsel for the appellant is not applicable to the facts of the instant suit.

14. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

15. Appeal stands dismissed being bereft of merits.

16. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

27.05.2024.

komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No