



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-448-1989 (O&M)

Reserved on: 05.02.2025

Pronounced on: 10.02.2025

BALDEV SINGH AND OTHERS

... APPELLANTS

Vs.

AMAR SINGH (DECEASED) THROUGH LRS AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Vikas Kumar Gupta, Advocate, for the appellants.
Ms. Deepali Puri, Advocate, for respondents No.1 to 4.

DEEPAK GUPTA, J.

Suit for declaration regarding property in dispute filed by plaintiffs Amar Singh etc. (*contesting respondents No.1 to 4 herein*) was dismissed by the trial Court vide judgment & decree dated 03.02.1988. However, the appeal filed by the said plaintiffs was partly accepted by the First Appellate Court on 06.12.1988, giving rise to the present Regular Second Appeal by some of the contesting defendants (*appellants herein*), impleading other contesting defendants as proforma respondents N: 6 & 7.

2. Trial Court record was called. Same has been perused. In order to avoid any confusion, parties shall be referred as per their status before the trial Court.

3.1 Plaintiffs are sons of defendant No.1 - Gurbax Singh (*proforma respondent N: 5 herein*). They constituted a joint Hindu family with Gurbax Singh as its Karta. Suit property in the hands of Gurbax Singh was Joint Hindu Family coparcenary property and being managed by Gurbax Singh as its Karta. Gurbax Singh was convicted for committing double murder of Balbir Singh and Hari Singh and was undergoing life imprisonment. Legal heirs of Balbir Singh (*defendants No.2 to 7-appellants and proforma respondents N: 6 & 7 herein*) brought a suit for compensation. Suit was decreed on 24.04.1980 for compensation of ₹60,000/- vide Ex.DZ/2, which was later on reduced by the appellate Court to ₹35,000/-. In order to realize the said amount, the decree holders-legal heirs of Balbir Singh

brought the execution and in the execution proceedings, the suit property i.e. Joint Hindu Family coparcenary property of the plaintiffs was put to auction vide order dated 13.06.1983. Plaintiffs' filed objections in the said Execution petition, but the same was dismissed by the Executing Court vide order dated 08.12.1983 vide Ex.P17 holding that objections had been filed just to delay the execution proceedings. The said order was confirmed by the Appellate Court on 28.02.1984 vide Ex.DZ/1 and there is nothing to show that the said order was further challenged.

3.2 Plaintiffs then brought the present suit seeking declaration that suit property is Joint Hindu Family coparcenary property and that they & defendant N: are owners in possession thereof. They further prayed for a consequential relief to set aside the sale dated 13.06.1983 by the Executing court being more than the due share of defendant No.1.

3.3 Defendants No.2 to 7 contested the suit by claiming that suit property was not coparcenary property. Objection was further raised that similar pleas, as taken in the present suit were raised by the plaintiffs by filing objections during the execution proceedings and the same have been dismissed up to the Appellate Court and therefore, the present suit was not maintainable being barred by *res judicata*.

3.4 Necessary issues were framed. Evidence produced by the parties was taken on record.

4. Trial Court found that the plaintiffs and defendant No.1 constituted a Joint Hindu Family and the suit property was their Joint Hindu Family coparcenary property. However, suit of the plaintiffs was dismissed vide judgment dated 03.02.1988 being not maintainable, as objections filed by them during the execution proceedings, had already been dismissed and the order was maintained up to the Appellate Court. It was further held that auction through court was not alienation without legal necessity and that no case was made out in favour of the plaintiffs, whose estate has been auctioned by the Court in Execution Proceedings for a liability incurred by their father.

5. Plaintiffs went in appeal. The First Appellate Court affirmed the finding to the effect that plaintiffs and defendant No.1 constituted a Joint Hindu Family and that they owned the suit property as Joint Hindu Family coparcenary property. However, the finding of the trial Court to the effect that suit was not maintainable, was set aside by holding that the objections as filed by the plaintiffs in the execution proceedings, were not considered on merits and rather, the same were dismissed by observing that the same had been filed to delay the proceedings and as such, the principle of *res judicata* was not applicable. Thus, the suit was held maintainable. It was further held by the appellate court that decree for compensation obtained against defendant No.1-Gurbax Singh was tainted with criminal liability and so, the debt incurred under the influence of wrath/anger of Gurbax Singh, could not be said to be for legal necessity. It was held that as such, decree passed against the father of plaintiffs, i.e., Gurbax Singh could not be executed against the whole of the Joint Hindu Family coparcenary property, since the debt had been incurred for illegal and immoral purpose. Consequently, the impugned sale was set aside to the extent of 4/5th share of the plaintiffs in the suit property. Consequent to these findings, the appeal was partly accepted. Suit was partly decreed by holding that compensation decree of ₹35,000/- was not binding on the interest of the plaintiffs, who had acquired vested right in the suit property by birth and as such, the sale of the suit land to the extent of interest of the plaintiffs i.e. 4/5th share in the suit land was illegal and the same was set aside to the extent of their interest.

6.1 Before this court, it is contended by Id. counsel for the appellants that the First Appellate Court has wrongly set aside the judgment of the trial Court and that the evidence on record and the legal proposition has not been properly appreciated by the First Appellate Court.

6.2 On the other hand, Id. counsel for the respondents-plaintiffs defended the judgment of the First Appellate Court.

7. This Court has considered submissions of both the sides and have appraised the record carefully.

8. The concurrent finding of the Courts below to the effect that plaintiffs and defendant No.1 constituted Joint Hindu Family and that nature of

suit property was Joint Hindu Family coparcenary property, has not been disputed by Id. Counsel for appellants before this Court. Even otherwise, said fact is proved by documentary evidence produced before trial court.

9. It is also undisputed that defendant No.1-Gurbax Singh was convicted for committing double murder of Balbir Singh and Hari Singh and in the suit for compensation, filed by the legal heirs of Balbir Singh, decree for compensation of ₹35,000/- was passed against Gurbax Singh. It is further not disputed that during execution of that compensation decree, the suit property was put to auction sale. Objections were filed by the sons of Judgment Debtor -Gurbax Singh i.e., plaintiffs of present case in the execution proceedings, which were dismissed by the Executing Court and the order was affirmed by the Appellate Court.

10. Two questions arise for consideration in the present appeal.

i) Whether the suit filed by the plaintiffs was maintainable on account of the fact that their objections had already been dismissed by the Executing Court in the decree passed in the previous litigation?

ii) Whether plaintiffs were liable to pay the debts incurred by their father-defendant No.1-Gurbax Singh on account of a decree having been passed against him after committing murder of two persons?

11. Taking up the first point, it has been observed by the First Appellate Court that perusal of the order dated 08.12.1983, whereby the executing court had dismissed the objections of the plaintiffs, revealed that those objections had been dismissed on the sole ground that these had been filed with *mala fide* intention to delay the execution of the decree. The First Appellate Court observed that objectors were not at all allowed to produce evidence so as to prove the ancestral nature of the property in dispute. No issue was framed to decide the nature of the property in dispute by the Executing Court. The objections were discarded on the solitary ground that the same had been filed to delay the execution of the decree. As such, the Appellate Court was of the view that since the objections were not decided on merits, therefore the findings given thereon by the Executing Court will not operate as *res judicata* in the subsequent present suit brought by the plaintiffs.

12. This Court fully agrees with the aforesaid observations made by the First Appellate Court. In ***Syed Mohd. Salie Labbai v. Mohd. Hanifa [(1976) 4 SCC 780]***, it has been held by Hon'ble Supreme Court that the basic method to decide the question of *res judicata* is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out as to what had been decided by the judgment, which operates as *res judicata*.

13. In ***Prem Kishore and Others Versus Brahm Prakash and Others 2023 SCC OnLine SC 356***, Hon'ble Supreme Court held as under:

“38. The general principle of *res judicata* under Section 11 of the CPC contain rules of conclusiveness of judgment, but for *res judicata* to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be *res judicata* in a subsequent suit.”

14. Thus, in case issue in question in previous proceedings has not been decided on merits and rather, the same has been dismissed due to some technical reason/mistake, the decision of previous proceedings on that issue cannot operate as *res judicata*.

15. Since in the present case, it has been found by the First Appellate Court that objections filed by the plaintiffs during the execution proceedings,

were not at all considered on merits and rather, the same were dismissed on the solitary ground that the same were filed to delay the proceedings, therefore, the finding of the Executing Court, dismissing the objections, will not operate as *res judicata*, as those were not decided on merits. As such, the suit has been rightly held by the First Appellate Court to be maintainable and it has been rightly held that the orders passed by the Executing Court, whereby objections were dismissed, will not amount to *res judicata*.

16. The second point is that as to whether the plaintiffs are liable to satisfy the decree suffered by their father Gurbax Singh-defendant No.1 on account of the fact that compensation has been awarded against him after committing double murder; and as to whether that decree was the result of illegal/ immoral act of defendant No.1. In other words, whether sale of property in dispute was for legal necessity or for immoral/illegal purpose.

17. In this regard, it will be relevant to refer to para 298 of 'Principles of Hindu Law' by Mulla (15th edition). It reads as under

"298. Immoral (*avyavaharika*) debt. - Sons, grandsons and great grandsons are bound to pay all debts contracted by father, grandfather or great grandfather, except the following debts : -

- (1) debts for spirituous liquor;
- (2) debts due to losses at play;
- (3) debts due for promises made without consideration;
- (4) debts contracted under the influence of lust or wrath;
- (5) debts for being surety for the appearance or for the honesty of another;
- (6) unpaid fines;
- (7) unpaid tolls;
- (8) any debts which is *avyavaharika* which is rendered by Cole-Brooke as equivalent to a debt for a cause 'repugnant to good morals.'"

18. In ***S. M. Jakati vs S. M. Borkar AIR 1959 SC 282***, it has been observed by Hon'ble Supreme Court as under:

“In Hindu law there are two mutually destructive principles, one the principle of independent coparcenary rights in the sons which is an incident of birth, giving to the sons vested right in the coparcenary property, and the other the pious duty of the sons to discharge their father's debts not tainted with immorality or illegality, which lays open the whole estate to be seized for the payment of such debts. According to the Hindu law givers, this pious duty to pay off the ancestors' debts and to relieve him of the death torments consequent on non-payment was irrespective of their inheriting any property, but the courts rejected this liability arising irrespective of inheriting any property and gave to this religious duty a legal character. [Masit Ullah v. Damodar Prasad](#), 53 Ind App 204. For the payment of his debts, it is open to the father to alienate the whole coparcenary estate including the share of the sons and it is equally open to his creditors to proceed against it; but this is subject to the sons having a right to challenge the alienation or protest against a creditor proceeding against their shares on proof of illegal or immoral purpose of the debt. These propositions are well settled and are not within the realm of controversy. (*Panna Lal v. Mst. Naraini*, 1952 SCR 544 at pp.552, 553,556,559; *Girdharee Lal v. Kantoo Lal*, 1 Ind App 321 at p.333 (PC); *Suraj Bansi Koer v. Sheo Prasad Singh*, 6 Ind App 88 at p. 101 (PC); [Brij Narain v. Mangla Prasad](#), 51 Ind App 129 p.136.)

XXXXXXXXXXXXXX

Therefore, unless the son succeeds in proving that the decree was based on a debt which was for an immoral or illegal purpose the creditor's right of seizing in execution of his decree the whole coparcenary property including the son's share remains unaffected because except where the debt is for an illegal or immoral purpose it is open to the execution creditor to sell the whole estate in satisfaction of the judgment obtained against the father alone.”

[underlined portion emphasised by this court]

19. In ***Bai Mani and others vs Usafali Bhudar and others AIR 1931 BOMBAY 229***, Bombay High Court held as under:

“8. With regard to the pious obligations of the son to pay the debt of his father, the matter has been fully considered by this Court in the case

of **Hanmant Kashinath v. Ganesh Annaji [1918] 43 Bom. 612**, where a distinction is made between the liability of the sons to pay the father's debt in respect of money which was misappropriated by the father and money for which the father was liable on account of breach of civil duty. The son is not liable to pay the debt when such debt consists of money misappropriated by the father, and in support of the proposition the cases of **Mahabir Prasad v. Basdeo Singh [1884] 6 All. 234**, **Pareman Dass v. Bhattu Mahton [1897] 24 Cal. 672** and **McDowell & Co v. Ragava Chetty [1903] 27 Mad. 71** are pertinent. On the other hand, where the debt is incurred by the father on account of breach of civil duty, the son would be liable to pay the said debt though the father may be subsequently liable to be prosecuted for criminal misappropriation, according to the case of **Natasayyan v. Ponnusami [1892] 16 Mad. 99**, **Kanemar Venkappayya v. Krishna Chariya [1907] 31 Mad. 161**, **Gurunatham Chetty v. Raghavalu Chetty [1908] 31 Mad. 472** and **Tirumalayappa Moodelliar v. Veerabudra [1909] 4 I.C. 1090**. The decision in the case of **Darbar Khachar v. Khachar Harsur [1908] 32 Bom. 348** has been criticized in **Chhakauri Mahton v. Ganga Prasad [1911] 39 Cal. 862** where it was held that the distinguishing line must be drawn between a criminal offence and a breach of civil duty and where the taking of money is not in itself a criminal offence, a subsequent misappropriation by the father cannot discharge the son from the liability. It would follow from the decided cases that if the liability arises directly from a criminal act, i.e., an act for which the father may or may not have been successfully prosecuted, but which can be presumed or proved to be criminal on the evidence on the record, the son would not be bound to pay the father's debt.....”

20.. The abovesaid legal position will make it clear that sale of coparcenary property on the basis of the judgment obtained against the father of Hindu sons, will not bind the interests of the Hindu sons in the coparcenary property, in case the debt was incurred by the father of the Hindu son for illegal or immoral purpose.

21. In the present case, it is not in dispute that defendant No.1-Gurbax Singh was convicted for having committed murder of Balbir Singh and Hari Singh. Heirs of Balbir Singh had filed the suit for compensation against Gurbax

Singh for commission of the murder of Balbir Singh and said heirs were awarded the compensation to the tune of ₹35,000/-.

22. As noted earlier, the First Appellate Court established as a matter of fact that according to judgment Ex.DZ/2 dated 24.04.1980, compensation was awarded to the legal heirs of Balbir Singh, whose murder was committed by Gurbax Singh in a fit of wrath. The court rightly observed that no respectable individual would commit such an act, and therefore, the decree for compensation against Gurbax Singh, stemming from his anger-driven actions, was associated with criminal liability.

23. Consequently, the debt incurred under these circumstances could not be deemed for legal necessity. The First Appellate Court correctly noted that as per established legal principles, judgment against Gurbax Singh—who was the father and head of a Hindu joint family—could not be enforced against the entire family, if the debt in question resulted from an immoral or illegal act. A debt contracted under the influence of wrath falls into this category, absolving Hindu sons from any obligation to repay it.

24. Given this legal and factual assessment, this Court finds no reason to interfere with the well-founded conclusions of the First Appellate Court. Consequently, this Court holds that there is no merit in the present appeal. First Appellate Court has rightly partly decreed the suit filed by the plaintiffs by holding that impugned sale of the suit land to the extent of their 4/5th share in the suit property, was illegal and as such, the First Appellate Court has rightly set aside the same to that extent.

Present Appeal is accordingly dismissed.

10.02.2025
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>