

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

**Reserved on 23rd of October, 2024
Pronounced on 16th January, 2025**

Regular Second Appeal No.138 of 1994 (O&M)

Joginder Singh (since deceased) and othersAppellants

Versus

Kamaljit SinghRespondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. J.S. Dhaliwal, Advocate
for the appellants.

Mr. Raj Kumar Garg, Advocate
for the respondent.

PANKAJ JAIN, J.

Defendants are in second appeal.

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

3. Plaintiff filed suit for possession claiming that he along with Tejawant Singh are members of Joint Hindu Family. Suit land is ancestral and co-parcenary property *qua* plaintiff and defendant No.6. Defendant No.6 father of the plaintiff, is a man of bad vices. In order to fulfill his vicious desires, he executed sale deed dated 20.11.1981 in favour of defendant No.1 to 4 *qua* land admeasuring 23 Kanals 15 Marlas and that dated 21.05.1980 in favour of defendant No.5 *qua* land admeasuring 10

Kanals 10 Marlas without any legal necessity. Defendant No.6 having no right to alienate the suit land, the sale deeds executed by him are illegal, null and void and not binding *qua* the rights of the plaintiff. Plaintiff who was minor filed suit through his mother Balbir Kaur.

4. Defendant No.6 was proceeded *ex parte*.

5. Suit was contested by defendants No.1 to 5 claiming themselves to be owners for valuable consideration. It was claimed by defendants No.1 to 5 that plaintiff has no relation with Tejwant Singh. Plaintiff himself has considerable property. Tejwant Singh had no income from the suit land and had taken loan from the bank. The entire suit land was mortgaged with different persons. Defendant No.6 was working as a driver and living in Budhlada Mandi. After selling suit land, he became co-owner of a truck using proceeds of the sale consideration. Part of the sale consideration was used to pay back mortgaged amount to Primary Co-operative Land Mortgage Bank Limited, Mansa. Defendant No. 1 to 5 also denied that the suit land in question was a co-parcenary or ancestral property as claimed by the plaintiff.

6. Suit was put to trial by Court of First Instance, framing following issues:

- “1. Whether the sale deed no. 1107 dated 20.11.81 and sale deed no. 271 dated 21.5.80 executed by the defendant No. 6 in favour of the defendants No. 1 to 5 are illegal null and void *qua* the rights of the plaintiff as being executed by defendants without any legal necessity? OPP.
2. Whether the suit land is hindu Joint Coparcenary property? OPP.

- 2(A). Whether Tejawant Singh and his father are Governed by the custom of Jats and a son of Jathas no right to challenge alienation made by his father if so its effect? OPD.
3. Whether the plaintiff entitled to possession of the suit land as prayed for? OPP.
4. Whether the plaintiff has no locus standi to file the suit as plaintiff is not related in any manner to defendant No.6 OPD.
5. Whether the plaintiff has filed the suit with the connivance of the defendant No. 6? OPD.
6. Whether the suit of the plaintiff is bad for mis-joinder of cause of action? OPD.
7. Relief.”

7. Trial Court answered all the material issues in favour of the plaintiff and decreed the suit.

8. The aforesaid findings returned by the Trial Court stands affirmed by the Lower Appellate Court.

9. I have heard counsel for the parties at considerable length and have carefully gone through records of the case.

10. In the considered opinion of this Court, the fate of the *lis* hinges upon the finding recorded by the Courts below on issue No.2.

11. Counsel for the appellants has not been able to point out any infirmity *qua* findings recorded on the other issues. In order to assert his right to challenge the sale deeds executed by defendant No.6 in favour of defendants No.1 to 5, the plaintiff was required to prove his right in the suit land. In order to prove the same, he was either required to prove that the land is a property of Hindu Undivided Family or is a Co-pacenary property

or is an ancestral property. It has come on record that defendant No.6 Tejwant Singh is son of Kaka Singh. Kaka Singh inherited suit land from his father Pritam Singh. After the death of Kaka Singh, mutation *qua* his inheritance was sanctioned in favour of his son i.e. defendant No.6 Tejwant Singh and his widow Gurnam Kaur. Thus, 1/2 share left by Kaka Singh in the hands of Gurnam Kaur became her self-acquired property. After death of Gurnam Kaur, her 1/2 share was inherited by Tejwant Singh i.e. defendant No.6. There is no evidence brought on file by the plaintiff to show that the land inherited by Tejwant Singh from Gurnam Kaur could be segregated from 1/2 share held by him through his father Kaka Singh.

12. In view of above, land in the hands of Tejwant Singh cannot be held to be ancestral having got mixed with his self-acquired property, he succeeded through Gurnam Kaur. Reference can be made to law laid down by Apex Court in the case of **Mara and others vs. Nikko and others @ AIR 1964 SC 1821** wherein Supreme Court held as under :

“7. Now, it has been ruled in the Punjab consistently that where lands are so mixed up that the ancestral and non-ancestral portions cannot be separated they must be regarded as non-ancestral, unless it is shown which are ancestral and which are not. This was laid down by the Privy Council in *Attar Singh v. Thakar Singh*, 35 Ind App. 206 (PC). It was held by Mr. Justice Kapur (as he then was) in *Indar Singh v. Gulzara Singh*, AIR 1951 Punjab 345 basing himself upon *Saif-ul-Rahman v. Mohammad Ali Khan*, ILR 9 Lahore 95 and *Jagtar Singh v. Raghbir Singh*, ILR 13 Lahore 165 that land ceases to be ancestral if it comes into the hands of an owner otherwise than by descent. Once these conclusions are reached, it is quite obvious that the decision of the District Judge not to apply the answer to question No. 52 to non-ancestral land

was right. It may be mentioned that the answers to questions refer to ancestral property only and this is now firmly established. In fact, it was not denied at the hearing.”

13. Both the Courts below erred in holding that the property was a Joint Hindu Family Property merely for the reason that the parties constituted Joint Hindu Family. Trite it is that under Hindu Laws, there is a presumption in favour of the jointness of family but there is no presumption w.r.t.. jointness of the property. In order to prove that the property is a Joint Hindu Family Property, party asserting so, is required to prove joint nucleus which was utilized for acquisition of the property. There is no such pleading much less evidence brought on record to that effect.

14. In view of above, this Court finds that the plaintiff miserably failed to prove the ancestral nature of the property. There is no evidence on record regarding property being owned by Joint Hindu Family. Thus, the finding on issue No.2 and as a consequence thereof finding on issue No.4 needs to be reversed.

15. As a sequence of the discussion held hereinabove, this Court finds that the present appeal deserves to be allowed. Plaintiff having no right in the property sold by defendant No.6 in favour of defendants No.1 to 5 was not competent to maintain the suit for possession. Consequently, the instant second appeal is allowed. Judgments and Decrees passed by both the Courts below are hereby set aside.

16. Pending application, if any, shall also stand disposed off.

January 16, 2025

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No