(2023-4)212 PLR 596

PUNJAB AND HARYANA HIGH COURT

*Before : Justice Vikram Aggarwal*.

MOHINDER SINGH – Appellant

*Versus*

NARINDERPAL SINGH and others – Respondents

RSA-755 of 2017 (O&M)

**Hindu Succession Act, 1956 (30 of 1956), Section 6, 8 – Coparcenary property – Once the property had been acquired by way of succession, it would lose its ancestral character – When a property is received by way of natural succession under Section 8 of the Hindu Succession Act, 1956, by Class I heirs, the coparcenary seizes to exist and the property in the hands of the heirs does not continue to be coparcenary property**

*Held,* For proving that a property is ancestral/coparcenary property, a specific procedure has to be followed – Excerpts have to be drawn which was not done – Per Revenue record property was owned by BS from whom it went to KS and then to GS – GS was not the sole person who had inherited the property from KS but he had inherited it by way of succession in equal shares with his sister as per the provisions of Section 8 of the Hindu Succession Act, 1956 – Once the property had been acquired by way of succession, it would lose its ancestral character . *Commissioner of Wealth Tax, Kanpur Etc. v. Chander Sen Etc, , Bhanwar Singh v. Puran* and *Uttam v. Saubhag Singh , Kanha v. Mange Ram , followed.* [Para 16]

**Cases referred:**

1. (2008-2)150 PLR 186, *Bhanwar Singh v. Puran*
2. (2013-4)172 PLR 662 (SC), *Rohit Chauhan v. Surinder Singh*.
3. 1966 AIR (SC) 1879, *Eramma v. Veerupana*
4. 2009 (15) SCC 184, *M. Yogendra v. Leelamma N.*
5. (2020) 11 SCC 103, *M. Arumugam v. Ammaniammal*
6. (2016) 4 SCC 68, *Uttam v. Saubhag Singh*
7. (2020-3)199 PLR 560, *Kanha v. Mange Ram*
8. 2006 (5) SCC 545, *Hero Vinoth (minor) v. Seshammal*
9. (2019-1)193 PLR 152, *Kirodi (Since Deceased) through his Lr. V. Ram Parkash.*
10. ., 2022 (12) Scale 92, *Satyender. V. Saroj*
11. 1986(3) SCC 567, *Commissioner of Wealth Tax, Kanpur Etc. v. Chander Sen Etc,*

*Mr. Tribhawan Singla, for the appellant. Mr. Amrinder Singh, for Mr. Gaurav Sharma, for respondent No.2. Dr. Surya Parkash, with Mr. Ankush Aggarwal, and Mr. Vikram Amarnath Garg, for respondent No.5. None for respondents No.1, 3 and 4.*

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**Vikram Aggarwal, J.** – *(Reserved on: 05.10.2023 , Decided on: 21.12.2023)* – This is plaintiff's second appeal against concurrent findings recorded by both the Courts below in a

suit for declaration filed by him. For the sake of convenience, the parties shall be referred as per their original status.

2. The plaintiff-Mohinder Singh filed a suit for declaration to the effect that he was the owner in possession of land to the extent of 234/994 share out of land measuring 49 Kanals 14 Marlas, half share out of land measuring 13 Kanals 19 Marlas and 21/192 share out of land measuring 2 Kanals 8 Marlas owned by his father Gurdev Singh (fully described in the plaint) (hereinafter referred to as the 'disputed land') situated at Barnala (Punjab). A declaration was also sought that the Will dated 27.01.1999 executed by Gurdev Singh in favour of the defendants and the consequential mutation dated 28.11.2006 sanctioned on the basis of the said Will were illegal, null and void and had no bearing upon the rights of the plaintiff. The relief of joint possession was also sought along with consequential relief of permanent injunction.

3. One Kehar Singh was survived by his son Bishan Singh. Bishan Singh had two sons namely Gurdev Singh (plaintiff) and Darshan Singh. Gurdev Singh further had two sons namely Narinderpal Singh and Tejinder Singh (defendants No.1 and 2) whereas Darshan Singh also had two sons namely Gurwinder Singh and Harwinder Singh (defendants No.3 and 4). The case set up by the plaintiff was that the disputed land was coparcenary property since it was owned by Bishan Singh. After the death of Bishan Singh, the land devolved upon Kehar Singh and after Kehar Singh, it devolved upon the plaintiff and defendants No.3 and 4 since the brother of the plaintiff namely Darshan Singh had expired on 27.07.2006 during the lifetime of Gurdev Singh. Gurdev Singh had expired on 10.11.2006 and, therefore, the disputed land had been inherited in equal shares by the plaintiff and defendants No.3 and 4. It was pleaded that under the circumstances, Gurdev Singh was not competent to execute Will dated 27.01.1999 and, in any case, the Will and the consequential mutation dated 28.11.2006 had no bearing upon the rights of the plaintiff.

4. The suit was opposed by the defendants. A stand taken was that the disputed land was not coparcenary property. Certain preliminary objections were also raised. A stand was taken that the defendants were owners of the disputed land in accordance with the Will dated 27.01.1999 and that the Will had been executed by Gurdev Singh in their favour since Gurdev Singh was pleased with their services.

5. In the replication, the averments made in the written statement are denied and those made in the plaint were reiterated.

6. From the pleadings of the parties, the trial Court framed the following issues for adjudication:-

*1. Whether suit property is joint Hindu family coparcenary property? OPP*

*2. Whether the plaintiff is owner to the extent of ½ share of property owned by Gurdev Singh after his death by having received as per Hindu Law? OPP*

*3. Whether plaintiff is entitled for declaration as prayed for? OPP*

*4. Whether plaintiff is entitled for possession as prayed for? OPP*

*5. Whether plaintiff is entitled for permanent injunction as prayed for? OPP*

*6. Whether the mutation no.6618 dated 28.11.2006 having been sanctioned on the basis of Will dated 27.01.1999 is null and void and does not effect the rights of plaintiff? OPP*

*7. Whether plaintiff has got no locus-standi or cause of action to file present suit?*

*OPD*

*8. Whether plaintiff is estopped by his own act and conduct from filing present suit? OPD*

*9. Whether suit of the plaintiff is not maintainable in the present form? OPD*

*10. Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD*

*11. Relief.*

7. Parties led their respective evidence.

8. The trial Court dismissed the suit filed by the plaintiff. It was held that the disputed land was not coparcenary property but was in fact the property of Gurdev Singh which he had inherited from his father Kehar Singh. The trial Court held that the property of Kehar Singh was inherited in equal shares by Gurdev Singh and his sister Angrej Kaur and, therefore, the disputed land lost the character of ancestral property and went into the hands of Gurdev Singh as his self-acquired property and that under the circumstances, he was competent to execute the Will dated 27.01.1999.

9. The First Appellate Court also took a similar view and rejected the appeal filed by the plaintiff.

10. Aggrieved by the same, the plaintiff is in second appeal.

11. I have heard learned counsel for the parties and with their assistance, have perused the record.

12. Learned counsel for the appellant-plaintiff submitted that both the Courts erred in non-suiting the plaintiff. It was submitted that it had been proved on record that the disputed land was coparcenary property and, therefore, both the Courts took an erroneous view that the same was the self-acquired property since it had been inherited by Gurdev Singh and his sister Angrej Kaur. Learned counsel referred to the oral and documentary evidence led on the record of the case and submitted that the judgments passed by the Courts below are liable to be set aside. In support of his contentions, learned counsel relied upon the judgments passed by the Hon'ble Apex Court in the case of "*Bhanwar Singh v. Puran and Others",* (2008-2)150 PLR 186, *"Rohit Chauhan v. Surinder Singh and Others",* (2013-4)172 PLR 662 (SC), *"Eramma v. Veerupana and Others",* 1966 AIR (SC) 1879 and "*M. Yogendra and Others v. Leelamma N. and Others",* 2009 (15) SCC 184.

13. On the other hand, learned counsel for the respondents submitted that there is no illegality or infirmity in the findings recorded by the Courts below. In fact, the appeal was not contested before this Court by defendants No.1, 3 and 4 and only learned counsel appearing on behalf of the subsequent purchaser-defendant No.5 who had been impleaded as a party during the pendency of the present appeal addressed arguments. He supported the findings recorded by the Courts below and submitted that since Gurdev Singh had inherited the disputed land from his father Bishan Singh in equal shares along with his sister Angrej Kaur, it had lost the character of ancestral property and would be taken to be the self-acquired property of Gurdev Singh and under the circumstances, Gurdev Singh would be fully competent to execute a Will dated 27.01.1999 qua the said property. In support of his contentions, learned counsel placed reliance upon the judgments passed by the Hon'ble Supreme Court in the case of "*M. Arumugam v. Ammaniammal and Others", (2020) 11 SCC 103* and "*Uttam v. Saubhag Singh and Others*", (2016) 4 SCC 68 as also the judgment passed by this Court in the case of "*Kanha v. Mange Ram and Others",* (2020-3)199 PLR 560.

14. I have considered the submissions made by learned counsel for the parties.

15. Before adverting to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including '*Hero Vinoth (minor) v. Seshammal'* 2006 (5) SCC 545, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial questions of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in and *'Satyender and Ors. V. Saroj and Ors.' 2022 (12) Scale 92* respectively.

15.1 It was further held in the judgment of *Satyender and others v. Saroj and others* (supra) that though the requirement of formulation of a substantial question of law is not necessary, yet Section 41 of the Punjab Courts Act requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the Courts below had failed to determine some material issue of law or custom or usage having the force of law. It was held that what was, therefore, important was still a "question of law". It was also held that a second appeal was not a forum where the Court would re-examine or reappreciate questions of fact settled by the trial Court and the Appellate Court. While holding so, the judgment in the case of *Kirodi (Since Deceased) through his Lr. V. Ram Parkash and Ors*. (supra) was also considered.

16. There is no dispute with regard to execution of the Will dated 27.01.1999. The only question is as to whether Gurdev Singh was competent to execute the Will or not which was further dependent upon the question as to whether the disputed land was coparcenary property or not. It needs to be mentioned here that for proving that a property is ancestral/coparcenary property, a specific procedure has to be followed. Excerpts have to be drawn which in any case was not done. However, revenue record was produced to prove that the property was owned by Bishan Singh and from Bishan Singh, it went to Kehar Singh and from Kehar Singh to Gurdev Singh. Here it would be further relevant to note that Gurdev Singh was not the sole person who had inherited the property from Kehar Singh but he had inherited it by way of succession in equal shares with his sister Angrej Kaur as per the provisions of Section 8 of the Hindu Succession Act, 1956. Once the property had been acquired by way of succession, it would lose its ancestral character as was held by the Hon'ble Apex Court in the case of "*Commissioner of Wealth Tax, Kanpur Etc. v. Chander Sen Etc", 1986(3) SCC 567", Bhanwar Singh v. Puran and Others"* (supra) and "*Uttam v. Saubhag Singh and Others"* (supra). These judgments were relied upon by a Co-ordinate Bench of this Court and the Co-ordinate Bench also came to the conclusion when a property is received by way of natural succession under Section 8 of the Hindu Succession Act, 1956, by Class I heirs, the coparcenary seizes to exist and the property in the hands of the heirs does not continue to be coparcenary property. This view was taken by the Co-ordinate Bench in the case of "*Kanha v. Mange Ram and Others"* (supra).The conclusion drawn by the Co-ordinate Bench is extracted as under:-

*"15. It is not in dispute that family of Dhiru had shifted from Village Badal to Village Damkora almost 100 years before filing of the suit. Dhiru, the father had divided land situated in village Damkora measuring 110 bighas amongst his four sons Mange Ram, Raj Karan, Udey Singh and Rajesh. Mange Ram admitted that before dividing the agricultural land, Dhiru had also sold 30 bighas of land. It is also not in dispute that when Ganga Bishan died on 8.7.1968, property owned by Ganga Bishan came to be inherited by his widow, three sons and a daughter. Thus, the succession of Ganga Bishan took place in*

*accordance with section 8 of the Hindu Succession Act, 1956. Mutation in this regard was sanctioned in the year 1968. Copy of the mutation is Ex.P-3, produced by the plaintiff himself. Thus, once under section 8 of the Hindu Succession Act property came in the hands of class 1 heirs, such property would not continue to be a coparcenary property. In this regard, reference can be made to the judgments passed by the Hon'ble Supreme Court in 'Commissioner of Wealth Tax, Kanpur v. Chander Sen' 1986 (3) SCC 567. 'Bhanwar v. Puran 2008 (3) SCC 87 and 'Uttam v. Saubhag Singh (2016) 4 SCC 68. The conclusion drawn in the case of Uttam (supra) is extracted 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) 8 SCC 581, and Rohit Chauhan v. Surinder Singh (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:-*
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> *(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).*
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> *(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.*
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> *(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.*
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> *(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.*
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> *(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."*

17. This Court is an agreement with the view taken by the Coordinate Bench while relying upon the judgments of the Hon'ble Apex Court in the case of "*Commissioner of Wealth Tax, Kanpur Etc. v. Chander Sen Etc*" (supra), "*Bhanwar Singh v. Puran and*

*Others"* (supra) and "*Uttam v. Saubhag Singh and Others"* (supra).

18. It has also come on record that the property inherited by Angrej Kaur was subsequently transferred by Angrej Kaur to Gurdev Singh and Darshan Singh in equal shares. However, this alone would not be of any consequence in so far as the nature of the property is concerned. It has also come on record that Gurdev Singh and Darshan Singh had also alienated property to colonizers for being developed as a colony. Had the property been coparcenary property, they themselves would also not have been competent to alienate the same.

19. It would also be worthwhile to mention here that during the pendency of the suit before the trial Court initially, a compromise Ex. P-1 had been placed on record and an application had been moved by defendants No.1, 3 and 4 for being transposed as plaintiffs. However, subsequently, this prayer was not pressed and was accordingly declined by the trial Court when an application under Order 10 was moved by defendants No.1, 3 and 4. This fact seems to have escaped the attention of both the Courts below. Though it may not have a direct bearing on the merits of the issue, however, it would be important to make a mention of the same lest the issue is raked up at a subsequent stage.

20. I have perused the judgments relied upon by learned counsel for the plaintiff. In the case of "*Bhanwar Singh v. Puran Singh and Others"* (supra), the applicability of Section 8 of the Hindu Succession Act, 1956 to the facts of that case was being examined by the Hon'ble Apex Court. There, one Bhima was the owner of the property. He expired in the year 1972 leaving behind his son Sant Ram and three daughters. The appellant before the Hon'ble Apex Court was the son of Sant Ram and was born in 1977. The properties in suit had been partitioned between Sant Ram and his sisters and their respective shares were reflected in the revenue records of 1973-74. The appellant before the Hon'ble Supreme Court contended that the properties of Bhima were joint family properties and, therefore, could not have been transferred by Sant Ram without there being any legal necessity. The Hon'ble Apex Court, after examining the law on the subject, held that since the properties had been partitioned among Sant Ram and his sisters, Sant Ram duly possessed the right to transfer the lands which had fallen to his share. It was further held that in terms of Section 19 of the Hindu Succession Act, 1956 since Sant ram and his sisters became tenants in common and took the properties per capita and not per stripes each one of them was entitled to alienate their share. This judgment would, therefore, not come to the aid of the plaintiff but would help the defendants. In the case of "*Rohit Chauhan v. Surinder Singh and Others"* (supra), it was held by the Hon'ble Apex Court, that the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that property. This judgment would also not come to the aid of the appellant because the fact of Mohinder Singh having been born in the year 1954 was not pleaded anywhere and there is no evidence to this effect on record. Even otherwise, as per the own case of the plaintiff, Mohinder Singh was born in the year 1954 whereas Kehar Singh expired in 1959 and it is thereafter that Gurdev Singh and Angrej Kaur inherited the properties of Kehar Singh by way of intestate succession. Still further, both Gurdev Singh and Mohinder Singh alienated certain properties and, therefore, under the circumstances, as already held, the property lost its character of coparcenary property. For the same reasons, the judgment in the case of "*M. Yogendra and Others v. Leelamma N. and Others"* (supra) would not be applicable.

In view of the aforementioned facts and circumstances, this Court does not find any illegality in the findings recorded by the Courts below. The appeal is accordingly found to be devoid of merit and is, therefore, dismissed.

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