
(2016) 10 P&H CK 0160
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 3699 of 2006 (O&M)

Santokh Singh

APPELLANT

Vs

Gurmit Singh

RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Hindu Succession Act, 1956 — Section 6

Citation : (2016) 4 LawHerald 3307 : (2017) 1 RCRCivil 744

Hon'ble Judges : Surinder Gupta, J.

Bench : Single Bench

Advocate : Sanjay Majithia, Senior Advocate with Inderjeet Singh, Advocate, for the Respondents; Munish Gupta, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

Surinder Gupta, J. - Both the appeals captioned above have been taken up together as the matter in issue in both the appeals is similar.

2. Santokh Singh son of Ujjagar Singh filed suit seeking declaration that suit land in both the suits situated in village Adamwal, tehsil and District Hoshiarpur is joint Hindu family coparcenary property of plaintiff and defendants no. 1 to 7 of which his father Ujjagar Singh (since deceased) was karta and sale deed dated 15.11.1994 with respect to 7 kanals of land executed by Ujjagar Singh in favour of defendant no. 12-Sukhjot Kaur, daughter of Ujjagar Singh is illegal, null, void, without consideration and without any legal and valid necessity.

3. The land measuring 110 kanals 18 marlas being 2/3rd share of land measuring 443 kanals 12 marlas was subject matter of Civil Suit No. 366 of 1995/2000 and 631/2524 share in 31 kanals 11 marlas; 2/3rd share in land measuring 97 kanals 2 marlas; 56 kanals 17 marlas, 39 kanals 18 marlas, 197 kanals 11 marlas; 2943/11772 share in land measuring 3 kanals 11 marlas and a house situated in village Adamwal were the subject matter of Civil Suit No. 566 dated 08.10.1998.

4. Two issues crop up for consideration in the suits filed by plaintiff, which were

disposed of by common judgment dated 08.11.2002 by Civil Judge (Junior Division), Hoshiarpur. Firstly that suit land is joint Hindu family coparcenary property and secondly, the suit land as fully described in headnote of the plaint was allotted to Inder Singh in lieu of his land left in Pakistan. Both the points were decided against the appellant.

5. First contention of learned counsel for the appellant is that suit land is joint Hindu family coparcenary property. He has argued that this land was allotted to Inder Singh in lieu of the land left by him in Pakistan. For this purpose, he has referred to affidavits (Ex. P-1 and Ex. P-2) wherein Ujjagar Singh and Avtar Singh sons of Inder Singh stated before Rehabilitation Authorities that Inder Singh was having 50 acres of land in Chak No. 5, P.O. Mandi Chishtian, District Bahawalpur, Pakistan in lieu of which they have been allotted 28-3/4 standard acre.

6. Learned counsel for the appellant has fairly conceded few facts, which are enumerated as follows:-

(i) The total suit land as described in Civil Suit No. 366 of 1995/2000 is 443 kanals 12 marlas out of which plaintiff-appellant has described share of Ujjagar Singh, his father, as 110 kanals 18 marlas.

(ii) The land described in Civil Suit No. 566 of 08.10.1998 is 440 kanals 1 marla plus a house.

(iii) As per allotment letter (Ex. P-4) in the name of Inder Singh, the total land allotted to him is 216 kanals 19 marlas.

7. Plaintiff could not make out that after consolidation khasra number of suit land mentioned in both the cases were allotted in lieu of the land of Inder Singh. Though, some of the khasra numbers could tally but entire land is not proved to have been allotted in lieu of the land allotted to Inder Singh. It is not required to go into the this controversy regarding allotment of land after consolidation as plaintiff/appellant failed to prove on file that entire suit land is joint Hindu family coparcenary property in the hands of Ujjagar Singh son of Inder Singh.

8. The plea raised by learned counsel for the appellant and his reference to evidence recorded in both the cases, if accepted, is sufficient to support the conclusion drawn by Courts below that suit property is not proved to be joint Hindu family coparcenary property. Plaintiff is in third generation from Inder Singh. In order to prove that suit land was joint Hindu family coparcenary property inherited by four sons of Inder Singh, he was required to prove by leading cogent and convincing evidence that entire suit land was allotted in consolidation proceedings in lieu of land which Inder Singh got in lieu of his land in Pakistan. It is no more res integra that if part of suit land is joint Hindu family coparcenary property and merged with self acquired property of parties to the extent that it cannot be separated, whole land is to be treated as self acquired property in the hands of recorded owners. Reference in this regard can be made

to observations of Apex Court in case of Mara and others v. Mst. Nikko @ Punjab Kaur and another, 1964 AIR (SC) 1821, wherein it was observed in para 7 of the judgment as follows:-

"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 Avtar 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 and others, AIR 1951 Punjab 345 basing himself upon Saif-ul-Rahman v. Mohammand 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."

9. When Inder Singh has been allotted only 216 kanals 19 marlas of land as per allotment letter (Ex. P-4), the entire land owned by him, which is subject matter of suit, could not be treated as ancestral land. Ancestral and non-ancestral land when got mixed up and cannot be separated, will be treated as self acquired land of Ujjagar Singh and his brothers.

10. Learned counsel for the appellant fairly conceded during course of arguments that he is not in a position to make out that entire suit land was allotted in lieu of land allotted to Inder Singh vide letter (Ex. P-4) or to separately identify khasra numbers which were allotted in lieu of land allotted to Inder Singh before consolidation. In the absence of pleadings to above effect or evidence on record, learned counsel for the appellant could not make out that observation of Courts below that suit property is not proved to be joint Hindu family coparcenary property, is perverse against law, fact and evidence on record.

11. In view of my above discussion, appeals filed by plaintiff have no merits. No substantial question of law requiring determination arises in these appeal.