



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2215 of 1994 (O&M)
and XOBJC-1-C-1995
Date of Order:28.01.2025

Karam Chand and others

.Appellants

Versus

Halass and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Atul Gaur, Advocate
for the appellants.**

**Mr. Vijay Lath, Advocate, for
Mr. R.N.Moudgil, Advocate
for respondent no.1.**

ANIL KSHETARPAL, JUDGE (Oral)

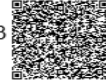
C.M.No.5070-C-2024

1. Allowed as prayed for.
2. The documents, Annexure A-1 and A-2 are taken on record.

MAIN

3. This order shall dispose of Regular Second Appeal No.2215 of 1994 and Cross-Objection No.1-C of 1995.

4. The defendants assail the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiff's suit for decree of declaration with consequential relief of permanent injunction to the effect that they are joint owner in possession of the property. In substance, the plaintiff claims that there are two properties specified in the



head note as 'A' and 'B'. Both the properties are Joint Hindu Family coparcenary Properties and therefore, the Will executed by Sh. Chuhru in favour of his four sons, namely, Sh. Karam Chand, Sh. Gurdas Ram, Sh. Dev Raj and Sh. Surjit Ram, is illegal. The suit was filed by Sh. Halass. Sh. Chuhru had five sons, namely, Sh. Harlass, Sh. Karam Chand, Sh. Gurdas Ram, Sh. Dev Raj and Sh. Surjit Ram, a daughter Smt. Devki, apart from widow Smt. Shanti Devi.

5. The defendants while contesting the suit denied that the property was Joint Hindu Family Coparcenary Property. They claim that both the properties to the exclusion of Sh. Halass on the basis of registered Will dated 23.02.1988.

6. The trial court decreed the suit and declared that the plaintiff is entitled to 1/7th share. It was held that the execution of the Will is proved, however, the property was ancestral, hence, it could not be bequeathed by virtue of Will. The First Appellate Court disposed of the appeal while modifying the judgment of the trial court to the extent that Sh. Chuhru was entitled to execute the Will qua his share.

7. During the pendency of the appeal, an application under Order 41 Rule 27 CPC was filed for permission to lead additional evidence in order to prove that the property described in head note 'A' is a self acquired property as it was allotted to Sh. Chuhru.

8. On 25.07.2024, the following order was passed:-

“1. During the pendency of the appeal, the defendants have filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) for permission to lead additional evidence in



order to produce and prove the certificate of allotment of the disputed property in favour of their predecessor, namely Chuhru son of Hira.

2. *In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The plaintiff has filed a suit claiming that the property is a Joint Hindu Family Coparcenary property and Chuhru has no right to bequeath the property by a registered Will in favour of his four sons while excluding the plaintiff. Both the Courts below have held that the property is ancestral and Chuhru had inherited the property from his forefathers. Thus, the Trial Court decreed the suit by declaring that the plaintiff is entitled to 1/7th share. The First Appellate Court has modified the decree while declaring that Chuhru was entitled to execute the Will qua his own share.*

3. *As already noticed, during the pendency of the appeal, the certificate of allotment of suit property in favour of Chuhru has been produced to prove that it was his self acquired property.*

4. *Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.*

5. *It is evident that if the defendants prove the certificate of allotment, the entire basis of plaintiff's case shall stand negated. In fact, this document goes to the root of the matter. It is necessary for appropriate adjudication of the case.*

6. *The learned counsel representing the plaintiff (respondent herein) submits that this document is required to be proved by the defendants by leading appropriate evidence.*

7. *Keeping in view the aforesaid discussion, the present application (CM-7339-C-2024) is allowed. The*



appellants shall produce the original allotment certificate and a copy of mutation shall be remitted to the Trial Court. The Trial Court is directed to record the evidence and forward the report to this Court within a period of six months, from today.

8. Adjourned sine die. The appeal shall be listed for hearing as and when the report is received from the Trial Court.”

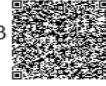
9. The trial court after recording the evidence have forwarded the same to this court. It is evident that the that the property under head note 'A' is a self acquired property as it was allotted to Sh. Chuhru under the provisions of the Punjab Utilization of Surplus Area Scheme, 1973.

10. Though, the learned counsel representing the respondents has contended that the property is still ancestral, however, keeping in view the three documents, namely, allotment letter, certified copy of mutation and the register from the SDM Office prove that the property described in head note 'A' was in fact, allotted to Sh. Churu and hence self acquired property. The learned counsel representing the appellants does not dispute the correctness of the findings of fact arrived at by the courts below with respect to property described under head note 'B'.

11. At the time of arguments, no submission was made by the learned counsel representing the respondents regarding the cross-objections.

12. Hence, the judgment of the courts below are modified and the suit filed by the plaintiff qua property described in head note 'A' is dismissed, whereas the judgments passed by the courts below with respect to property under head note 'B' are upheld.

13. The appeal is partly allowed and cross-objections are disposed



of.

14. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

January 28, 2025

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No