



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106

RSA-1921-1994 (O&M) &
IOIN-RSA-1921-1994
Reserved on : 21.01.2025
Pronounced on : 25.03.2025

Prem Sagar

..... Appellant

versus

Chaman Lal and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

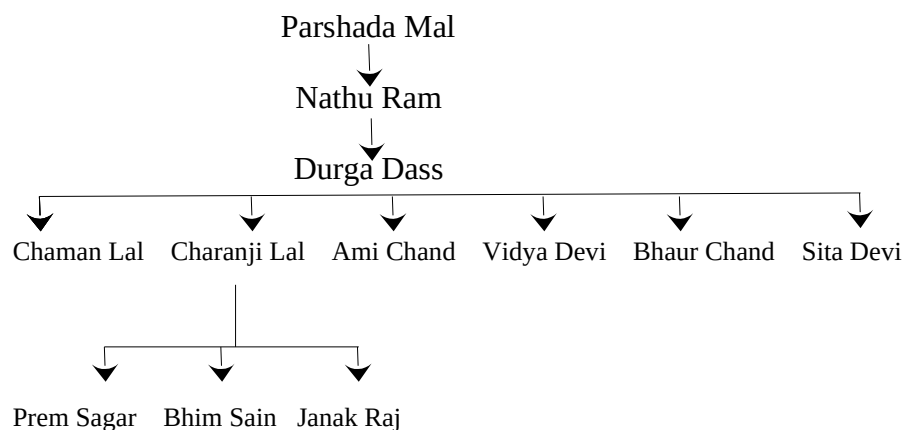
Present: Mr. Kishan Garg, Advocate
for the appellant.

Mr. Sanjeev Kumar, Advocate for
Mr. K.S. Chahal, Advocate
for respondents No.13 to 26.

PANKAJ JAIN, J. (Oral)

1. Plaintiff is in second appeal.
2. Plaintiff filed suit seeking partition by metes and bonds and separation of his 1/12th share in the properties claiming the same to be coparcenary and HUF properties.
3. Before advertng to the facts of the case, it will be apt to peruse the pedigree table demonstrating relationship between the parties:-

Prem Sagar s/o Charanji Lal s/o Durga Dass





4. Durga Dass died in the year 1933. He had four sons, namely Chaman Lal, Charanji Lal, Ami Chand @ Amin Chand, Bhaur Chand and two daughters, namely Vidya Devi and Sita Devi. Ami Chand died in the year 1979. Janak Raj s/o Charanji Lal died in the year 1969. Plaintiff is son of Charanji Lal. He claims that properties at Sr. No.1 to 4 in schedule 'B' appended to the plaint, are coparcenary and joint hindu family properties of plaintiff and defendant No.1 to 23. They were inherited by the parties to the *lis* from Durga Dass. Properties mentioned in schedule 'C' attached to the plaint were purchased by joint hindu family constituted by sons, grand sons and great grand sons of Durga Dass with joint hindu family funds. Further case of the plaintiff is that the sons, grand sons and great grand sons of Durga Dass started a cooperative society in the name of Sherpur Bricks Workshop Cooperative Indl. Society Sherpur. Land mentioned in schedule 'D' attached to the plaint was purchased by the coparcenary in the name of the said cooperative society from joint hindu family funds. The same also thus, is a joint hindu family property. It has been further claimed that various firms as mentioned in the plaint being run by the descendants of Durga Dass, are all joint hindu family businesses, started with joint hindu family funds and are thus, joint hindu family concerns. Further case of the plaintiff is that some of the joint hindu family properties were alienated by different family members. The properties sold by them need to be set off while granting decree of partition. Plaintiff thus, claiming himself to be entitled to 1/12 share in the properties, sought partition by way of present suit.



5. Defendant No.10 to 12 admitted the claim of the plaintiff. Defendant No.1, 2, 5, 7, 8, 9, 13, 15, 14, 16, 17, 19, 21, 24, 27, 30 and 31 contested the suit. The main contest was amongst plaintiff, Bhaur Chand, legal heirs of Ami Chand and legal heirs of Chaman Lal. Apart from taking legal objections, the contesting defendants relied upon family settlement dated 17.08.1980. It is claimed that in view thereof, the plaintiff was precluded from filing the present suit. Defendant claims that during the life time of Lala Durga Dass, Chaman Lal-defendant No.1 was separated by Durga Dass. Properties described at Sr. No. 9 and 10 situated at Rampura Phool were given to defendant No.1 in an oral family settlement. Since then defendant No.1 has been residing at Rampura Phool with his family, having no concern with the other family. In the year 1938, Charanji Lal-father of the plaintiff shifted to Dhuri and started business in partnership with Ami Chand. Both of them purchased properties described at Sr. No. 13 and 14 at schedule 'C' in equal share with their own earnings. Bhaur Chand-defendant No.19 resided with the family at Sherpur. He along with Ami Chand and Charanji Lal, purchased property mentioned at Sr. No.23 of schedule 'C'. The joint family thus, disrupted in 1938 AD. Properties described in schedule 'C' are self acquired properties of Chaman Lal. 25 individuals including sons of descendants of Lala Durga Dass formed a cooperative society and purchased land with the funds of the society to start brick kiln. The land cannot be termed as joint hindu family property. Plaintiff alongwith his mother Shanti Devi got their share in joint hindu family properties. Partition was effected among plaintiff, Bhaur Chand and descendants of Ami Chand-deceased.



Writing to this effect was executed on 17.08.1980 between the parties. Chaman Lal is not party to the partition, thus there is no question of joint hindu family including Chaman Lal in evidence as claimed by the plaintiff.

6. On the basis of pleadings, following issues were framed:-

1. *Whether the suit of the pltff. is bad for non-joinder and mi-joinder of parties? OPD*
2. *Whether the pltff. is estopped by his act and conduct from filing this suit? OPD.*
3. *Whether the pltff. and Shanti Devi defdt. on their own behalf and on behalf of minor defdts. Narinder Kumar and Indra Rani partitioned the coparcenary property on 17.8.1980 and as such the pltff. is precluded from filing this suit? OPD.*
4. *If issue No.3 is proved, whether the suit is competent? OPP*
5. *Whether the defdts. are entitled to special costs? OPD*
6. *Whether the pltff. has got 1/12th share in the property mentioned in the head note of the plaint?OPP*
7. *Whether the mortgages effected by Amin chand, as described in para No.12 to 14 of the head note of the plaint, are not binding upon the pltff?OPP.*
8. *Whether Chaman Lal defdt. separated himself from the family during the life time of Durga Dass and the property described at Sr.No.9 and 10 of the head note of the plaint, fell to his share in an oral settlement? OPD*
9. *Whether the property described at Sr.No.3 & 7 of the Schedule 'B' is separate and distinct property?OPP*
10. *What was the share of Durga Dass in the properties mentioned at Sr.Nos. 1 to 3 of the head note of the plaint? OPP.*
11. *Whether the suit is maintainable without notice u/s 79 of the Co-operative Societies Act? OPP.*
12. *Whether the properties described in Schedule 'B' are co-parcenary properties and whether the property mentioned in Schedule 'C', 'D' and 'E' has been purchased with the funds provided by Joint Hindu Family and that the same is*



coparcenary property? OPP

13. Whether the plfff. and defdts.Nos. 1 to 23 constitute joint Hindu Family? OPP.

14. Relief.”

7. While deciding issue No.1, Court of first instance held that in the absence of Raunak Ram, who was necessary party, the suit was bad for non-joinder of necessary parties. While answering issue No.2, 3, 4, 6, 8, 12 and 13, it has been held that there is no evidence on file to prove that Chaman Lal-defendant No.1 ever lived at Dhuri or Sherpur after 1985 BK. Ex. D.1 partition dated 17.08.1980 shows that Chaman Lal never claimed any share from any property at Dhuri or Sherpur. All the properties at Dhuri or Sherpur are either in the name of Ami Chand or Charanji Lal or Bhaur Chand or/are in the their joint names. There is no evidence on file that any property at Rampura Phool is in the name of Ami Chand or Charanji Lal or Bhaur Chand. Chaman Lal divided properties amongst his sons in the year 1975 vide Ex. PZ. In the said partition, none of the properties located at Dhuri or Sherpur was included. Bhaur Chand also admitted that Chaman Lal separated in the year 1985 BK. Court of the first instance further found that from Ex. D.8 to Ex. D.12 and Ex. P.22 to Ex. P.26, it is clear that the defendants filed separate income tax returns. As per Ex. P.23, Chaman Lal was to get Rs.5,000/- from firm working under the name and style of M/s. Ami Chand Bhaur Chand. This proves that Chaman Lal never acted as karta of the joint hindu family as claimed by the plaintiff. Court of first instance further relied upon Ex. D.6 and D.7 to hold that plaintiff started business with Shiv Kumar, Raj Kumar and Jagdish Chand in partnership. He used to purchase and sell properties in the name of his



wife. As per Ex. D.4 and Ex. D.5, Shanti Devi mother of plaintiff filed ejectment applications claiming herself to be landlord qua properties situated at Dhuri. The inference thus is that she was collecting rent qua the said properties. Ami Chand and legal heirs of Charanji Lal filed suits against Sri Ram in the year 2005 BK for rendition of accounts. This all shows that all the brothers were running their own businesses in individual capacities and not as the HUF concerns. Plaintiff himself started business at Ludhiana in partnership with Janak Raj and others, which is evident from Ex. D.3.

8. Court further found that partition dated 17.08.1980 Ex. D-1 which stands proved by the statement made by Banarsi Dass DW.1 and Om Parkash DW.4 demolishes the case of the plaintiff. Ex. D.1 is a partition deed arrived at between Prem Sagar, Bhour Chand and legal heirs of Ami Chand itself shows that the parties partitioned the properties *inter se* including Chaman Lal and his sons. Chaman Lal had no concern with any of the properties after the year 1945. Returning findings against the plaintiff, Trial Court dismissed the suit filed by the plaintiff.

9. The aforesaid findings were affirmed by the Lower Appellate Court in first appeal vide judgment and decree dated 12.04.1988.

10. Dissatisfied plaintiff approached this Court in RSA No.1596 of 1988. The same was disposed off vide order dated 03.08.1993 which reads as under:-

“Civil Suit No. 114 instituted on 2.2.1982 by Prem Sagar against Chiman Lal and thirty one others for a decree of possession by way of partition was dismissed by Shri S.S.



Hundal, Sub Judge Ist Class, Dhuri, vide his judgment and decree dated 20.5.1985. The plaintiff challenged the abovesaid judgment and decree in civil appeal no.97 of 19.6.1985 which was heard by Mrs. Harmohinder Kaur Sandhu, District Judge, Sangrur (as her Lordship then was). This appeal was dismissed on 12.4.1988. The Regular Second Appeal of the plaintiff challenges the abovesaid judgment and decree.

I have heard the learned counsel for the parties.

The sole argument of Mr. Palli, learned counsel for the appellant is that documents Ex.P.22, P-32, P-33, P-35, P-44, P-45, P-47, P-48, P-56, P-64, P-65 and P-73 have not been considered by the courts below while deciding the very material issues.

Mr. Jain, learned counsel for the respondents has submitted that though the said documents have not been referred to by the learned Courts below yet the same being irrelevant, no prejudice had been caused to the appellant. I have carefully examined the judgments of the courts below. There is no finding recorded by either of the two Courts that either or all the above said 12 documents were irrelevant and had no bearing on the decision of the suit. In face with the said situation, the consensus is that the impugned judgment of the First Appellate Court be set aside and the case be remanded back for re-decision.

In view of the above circumstances, I set-aside the judgment and decree dated 12-4-1988 passed by the learned District Judge, Sangrur, remand the case back to him and direct him to hear the learned counsel for the parties, take into consideration the above said documents and then decide the case afresh. He should deliver the judgment on or before December 31, 1993. Parties through their counsel are directed to appear before the First Appellate Court on 1.09.1993.

The parties will maintain status quo at the spot subject to the orders of the learned First Appellate Court that may be passed on an application of any of the parties for permission to sell the property. Whole of the record be transmitted to the learned District Judge, Sangrur, forthwith.”

11. On remand, the appeal has been decided afresh by the Lower Appellate Court. Apart from reversing finding on issue No.11,



the Lower Appellate Court has affirmed the findings recorded by the Trial Court holding that the documents on record evidently show that the parties never treated properties as mentioned in schedule 'C' as joint hindu family properties. There is no evidence that there was a nucleus of a joint hindu family that facilitated acquisition of these properties. Lower Appellate Court further held that as per schedule 'E', the properties were sold by different family members individually and there is no evidence that the proceeds from these sales were ever utilized for acquiring properties as mentioned in schedule 'C'. Holding that properties as mentioned in schedule 'C' were purchased by different members of the family on different dates, without there being any flow of funds from joint hindu family or its income, the Lower Appellate Court repelled the contention raised by plaintiff.

12. Lower Appellate Court further held that in terms of Ex. D.1 and the fact that for almost half a century, Chiman Lal and his sons independently dealt with the properties situated at Rampura Phool, disruptions of the joint family status can be inferred. Lower Appellate Court held that in the absence of any challenge to the alienation of the properties as mentioned in schedule 'E' by individuals, it stands proved that those properties were created individually and dealt by the individuals. Likewise, Lower Appellate Court held that there being no evidence on record to prove that any firm was a joint hindu family concern, the plaintiff failed to prove his case. It has been held that in view of Ex. D.1 whatever joint properties were left, the same stood partitioned among the heirs of Durga Dass. The Lower Appellate Court held that the plaintiff was debarred from filing suit claiming partition of



the properties. Affirming findings of the Trial Court on issue No.2, 3, 4, 6, 8, 12 and 13, Lower Appellate Court dismissed the appeal preferred by the plaintiff.

13. Learned counsel for the appellant while assailing the findings recorded by the Courts below submits that there is ample evidence on record to show that the properties detailed out in schedule 'B' remained joint and were jointly owned by the family. All the business concerns came into being utilizing the funds of joint family. Thus, the businesses even though managed by individuals always remained joint hindu family concerns of undivided family consisting of sons, grand sons and great grand sons of Durga Dass. However, the Courts below have returned perverse findings without appreciating evidence on record. The findings being result of misreading of evidence, deserve to be set aside. He submits that in terms of the remand order passed by this Court in the earlier round of litigation, the Lower Appellate Court was required to test the findings of Court of the first instance on the basis of documentary evidence. Lower Appellate Court without appreciating the evidence referred to by this Court, has reiterated the findings which were set aside by this Court.

14. *Per contra*, counsel for the respondents have considered the evidence threadbare. Pure finding of fact has been recorded by the Courts below. Ex. D.1 dated 17.08.1980 stands fully proved. Even though plaintiff denied signatures thereupon, but while giving suggestions to the witnesses DW.1 and DW.4, it was claimed that the signatures of plaintiff were obtained on blank papers in police station. This itself shows that the signatures are admitted. Regarding the



signatures having been obtained on the blank paper, there is no pleading. In the light of the fact that Ex. D.1 stands fully proved, Courts below have rightly dismissed the suit filed by the plaintiff.

15. I have heard counsel for the parties and have carefully gone through the records of the case.

16. In order to appreciate the dispute between the parties, it will be apt to peruse the pleadings on record. Plaintiff seeks separate possession of 1/12th share in the properties and business of the firms described in the schedules B to E attached to the plaint. Plaintiff claims that the properties mentioned in schedule 'B' appended to the plaint are coparcenary and joint hindu family properties of plaintiff and defendant No.1 to 23, as the same flow from their common ancestor namely Durga Dass.

17. Plaintiff claims joint hindu family constituting sons, grand sons and great grand sons of Durga Dass. As per plaintiff, properties mentioned in schedule 'C' were utilizing joint hindu family funds. Thus, the properties mentioned in schedule 'C' are joint hindu family properties.

18. Plaintiff further claims that members of joint hindu family formed a cooperative society. Land mentioned in schedule 'D' was purchased in the name of cooperative society with joint hindu family funds. Thus, property as mentioned in schedule 'D' being a joint hindu family is liable to be partitioned. Plaintiff further claims that properties mentioned in schedule 'E' were alienated by members of the joint hindu family individually. He prays that proceeds of those sales need to be adjusted at the time of final partition.



19. Thus, the entire case of the plaintiff coalesces around the plea that the descendants of Durga Dass i.e. his sons, grand sons and great grand sons constitute a joint hindu family. The joint hindu family inherited properties mentioned in schedule 'B' from Durga Dass. These properties led to further acquisition of properties mentioned in schedule 'C' and schedule 'D'. In order to claim that the family remained joint, reliance is being placed upon Ex. P.22, P.35, P.36, P.44 and P.45.

20. Contesting defendants claim that Chaman Lal got separated during the life time of Durga Dass. Since then, he left village Sherpur and started residing in Rampura Phool. He had no concern with the joint hindu family thereafter. As per law regarding hindu joint families, though, there is presumption of a hindu joint family, but there is no such presumption regarding a property being joint family property. One who asserts the property to be a joint hindu family property, is required to prove nucleus of the joint family which led to acquisition of the said property. Reliance can be made to observations made by Supreme Court in the case of ***D.S. Lakshmaiah v. L. Balasubramanyam, (2003) 10 SCC 310***, wherein the Supreme Court observed as under:-

“18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.



19. Another contention urged for the respondents was that assuming Item No.1 property to be self-acquired property of appellant No.1, he blended the said property with the joint family property and, therefore, it has become the joint family property. Assuming the respondents can be permitted to raise such a plea without evidence in support thereof, the law on the aspect of blending is well settled that property separate or self-acquired of a member of joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilized out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation (see *Lakkireddi Chinna Venkata Reddi v. Lakkireddi Lakshmama* [AIR 1963 SC 1601 : (1964) 2 SCR 172] and *K.V. Narayanan v. K.V. Ranganandhan* [(1977) 1 SCC 244]).

21. Same view was expressed by Supreme Court in ***U.R. Virupakshappa v. Sarvamangala* (2009) 2 SCC 177**, observing as under:-

212. Joint Hindu family - (1) ***

(2) The joint and undivided family is the normal condition of Hindu society. An undivided Hindu family is ordinarily joint not only in estate but also in food and worship. The existence of joint estate is not an essential requisite to constitute a joint family and a family, which does not own any property, may nevertheless be joint.”

22. Applying the aforesaid parameters to the present case and the documents relied by the appellant, it needs to be ascertained whether plaintiff succeeded in proving a nucleus created by members of



the hindu undivided family consisting of Durga Dass, his sons and grand sons and as to whether it is the said nucleus which led to acquisition of further properties as claimed by the plaintiffs.

23. Ex. P.22 is affidavit of Chiman Lal @ Chaman Lal dated 12.03.1976. The same shows that Chaman Lal stated on oath that he is karta of hindu undivided family, namely Chiman Lal and sons. The said document does not advance the case of the plaintiff, rather cuts against the same. Chiman Lal claimed to be karta of HUF, namely Chiman Lal and sons. It does not point toward existence of HUF namely, Durga Dass and sons. Likewise, Ex. P.32 is statement of Chiman Lal while appearing as DW.7 in a Civil suit namely *Darshan Kumar vs. Chiman Lal etc.* Reliance is being placed upon the part of the testimony of Chaman Lal which reads as under:-

“There was no partition between us and the plaintiff and defendant No.3 to 29 or their predecessors-in-interest regarding any property.”

24. However, in cross examination, it was claimed by Chaman Lal that after the death of Durga Dass, he and Bhaur Chand acquired property in dispute. Charanji Lal and Ami Chand acquired property at Dhuri. Thus, the aforesaid testimony of Chaman Lal does not help the case of the plaintiff. Likewise, order dated: 27.09.1955, Ex.P.44, relates to a suit filed by the Ami Chand and Bhaur Chand sons of Durga Dass and sons of Charanji Lal. Order dated 27.09.1955 shows that Chaman Lal was initially not impleaded as a party. It is only on the objection taken by the defendants against the suit filed by Ami Chand, Bhaur Chand, and LRs of Charanji Lal that Chaman Lal moved the said application and was impleaded as defendant. Ex. P.56 is judgment



delivered in civil suit No.1 of 02.01.1978 dated 15.09.1982 by Sub-Judge, 1st Class, Rampura Phool in a suit titled as *Darshan Kumar vs. Chiman Lal and others*. The suit related to share in a factory plot situated within the limits of Mandi Rampura Phool. The said suit only related to a plot in which plaintiff was held to have share. Ex. P.65 is a communication received by firm under the name of Charanji Lal Ami Chand Dhuri. Though, plaintiff claims the same to be a family concern, but no account books have been produced in evidence to show whether the firm was a joint hindu family concern or a partner concern. Likewise, Ex. P.64 is a communication received from Imperial Bank of India to the same concern. Neither of these documents prove a joint hindu family constituted by sons, grand sons and great grand sons of Durga Dass to prove that there was a joint nucleus created by joint hindu undivided family properties or that there was any concern being run by HUF as claimed by the plaintiff. Ex. P.35 and P.36 shows there was a partition between legal heirs of Parshada Mal in 1949. Chaman Lal effected partition amongst his sons in 1975 which has come on record as Ex.PZ. This all proves that Chaman Lal never remained joint with his brothers after he shifted to Rampura Phool. The same also stands proved from writing Ex. D.1 dated 17.08.1980. The same relates to partition of properties situated at Dhuri and Sherpur.

25. Neither Chaman Lal or his sons got any property vide Ex. D.1. Even though, plaintiff denied his signatures on Ex.D.1. in the written statement, but later on during evidence shifted his stance claiming that his signatures were taken on blank papers. Once he admitted his signatures, onus shifted upon him to prove plea of factum



non-est.

26. There being no evidence on record to prove the plea that the signatures of the plaintiff were taken on blank papers, this Court does not find any reason to interfere in the pure finding of facts recorded by the Courts below. In the considered opinion of this Court, Ex. D.1 has dented the case of the plaintiff irreparably. Defendant having successfully proved execution thereof, plaintiff has been rightly non-suited by the Courts below.

27. As a sequel of the discussion here hereinabove, this Court does not find any merit in the appeal and the same is ordered to be dismissed.

28. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

**(PANKAJ JAIN)
JUDGE**

25.03.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No