



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

RSA-2109-1990 (O&M)

Udham Singh (deceased) through LRs

. . . . Appellants

Vs.

Balwant Singh

. . . . Respondents

**Reserved on: 28.02.2025
Pronounced on: 03.03.2025**

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. A.D.S. Sukhija, Advocate and
Mr. Ish Karan Singh Chhabra, Advocate
for the appellant.

Mr. Prabhjayot Singh Chahal, Advocate and
Mr. G.S. Nagra, Advocate for the respondent.

DEEPAK GUPTA, J.

Suit for declaration regarding property in dispute filed by plaintiff Balwant Singh (*respondent herein*) was dismissed by the trial Court of learned Sub-Judge 1st Class, Ajnala vide judgment dated 12.08.1987. However, the appeal filed by the said plaintiff was accepted by the first appellate court of learned Additional District Judge, Amritsar vide judgment dated 17.09.1990, thus, decreeing the suit. Against this reversal, defendant Udham Singh (*appellant herein*) has approached this Court by way of the present Regular Second Appeal.

2. Trial Court record was called. Same has been perused. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3. Pritam Singh, the father of plaintiff Balwant Singh was recorded to be owner of the suit land measuring 14 Kanal detailed in headnote of the plaint. He executed an agreement dated 07.04.1981 in favour of defendant Udham



Singh to sell the suit land to him. Based upon this agreement, Udham Singh brought a suit for specific performance, which was decreed on 29.11.1983 vide judgment Ex.D1. During the appeal filed by Pritam Singh against the said decree dated 29.11.1983 for specific performance, said Pritam Singh expired and his legal representatives including plaintiff of this case Balwant Singh were brought on record. An application was moved by the said plaintiff to amend the written statement so as to incorporate the plea that property in dispute was ancestral in nature and that same could not be sold by his father Pritam Singh without any legal necessity. However said application was dismissed by the Appellate Court. Ultimately, the appeal filed by Pritam Singh through his LRs was dismissed on 20.08.1985 vide judgment Ex.D2. Pursuant to the decree for specific performance passed by the Courts, impugned sale deed dated 26.12.1985 (*Ex.DW2/1*) was executed in favour of defendant of present case Udham Singh through process of the Court.

4.1 Plaintiff Balwant Singh (*now respondent*) son of Pritam then brought the present suit on 05.06.1986 challenging the aforesaid sale deed dated 26.12.1985 to be null, illegal and void. According to him, he along with his father Pritam Singh constituted a joint Hindu family, of which Pritam Singh was the Karta. Suit property was ancestral in the hands of his father Pritam Singh *qua* him. It was alleged that said Pritam Singh was a man of wasteful habits and that there was no legal necessity to sell the suit land. As such, he prayed for setting aside the sale deed dated 26.12.1985.

4.2 Defendant of the suit Udham Singh i.e. the appellant herein opposed the suit on various grounds including the fact that suit property was not ancestral in nature.

4.3 Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court vide judgment dated 12.08.1987 held the suit property to be ancestral in nature. It was further held by the trial Court that though deceased Pritam Singh was the Karta of the joint Hindu family but the



sale of the suit land by him was for the benefit of the joint Hindu family. Impugned sale deed in favour of defendant was held to be legal and valid. Consequent to these findings on the material issues, the suit was dismissed on 12.08.1987.

4.4 The Appellate Court, in the appeal filed by the plaintiff sought report from the trial Court on two points:-

- (i) Whether plaintiff and Pritam Singh constituted a joint Hindu family and if so, whether Pritam Singh was the Karta thereof.
- (ii) Whether impugned sale deed in favour of defendant was effected for legal necessity by Pritam Singh and/or was otherwise an act of good management on the part of Pritam Singh and was for the benefit for estate.

4.5 After getting the report dated 18.04.1990 from the trial Court, the Appellate Court endorsed the findings to the effect that suit property was ancestral in nature in the hands of Pritam Singh. It was further held that plaintiff and Pritam Singh constituted a joint Hindu family and that Pritam Singh was Karta thereof. It was held further that impugned sale deed was neither proved to have been executed for legal necessity nor it could be stated to be an act of good management or benefit of the estate. As such, impugned sale deed dated 26.12.1985 was set aside. Consequently, the Appellate Court vide its judgment dated 17.09.1990, allowed the appeal filed by the plaintiff and declared the sale deed dated 26.12.1985 Ex.DW2/1 to be null, illegal and void. It was further directed that plaintiff was entitled to be put in possession of suit land subject to payment of the sale consideration as received by his father to defendant Udham Singh.

5. Against the aforesaid reversal, defendant of the case has approached this Court. Vide order dated 14.11.1990 passed by this Court, dispossession of the defendant-appellant was stayed.

6. The principle contention raised by learned counsel for the appel-



lant-defendant before this Court is that both the Courts below have committed grave error in holding the suit property to be ancestral in nature. It is pointed out that as per the revenue record placed on record, as has been referred to by the trial court as well as the Appellate Court, suit property was inherited by plaintiff Balwant Singh from his father Pritam Singh. Said Pritam Singh had inherited the same from his father from Ujagar Singh. Learned counsel contends that there is absolutely no evidence to show that Ujagar Singh, the grandfather of the plaintiff Balwant Singh had inherited it from his father. It is argued that since the suit property was not inherited from third degree of ancestors, therefore, it cannot be held to be the ancestral property.

7. On the other hand, it is argued by learned counsel for the respondent that both the Courts below on the basis of evidence on record has rightly held the suit property to be ancestral in nature and that there is no scope for interference in the concurrent findings of facts in this regard.

8. I have considered submissions of both the sides and have perused the record carefully.

9. Perusal of the judgments passed by the Courts below would reveal that both the Courts, based upon the revenue record placed on file including Revenue Excerpt Ex.PW1/1, Khatouni Ishtemal Ex.P3, Naksha Hakdarwar Ex.P4, Khatouni Pamaiesh Ex.P5, Jamabandi for the year 1981-82 Ex.P2 found that suit property was originally owned by Ujagar Singh and after his death, the same was inherited by Pritam Singh i.e. father of the plaintiff along with his brothers and after the death of Pritam Singh, the suit property was inherited by the plaintiff. Once it is found that suit property was originally owned by Ujagar Singh i.e. grandfather of the plaintiff and there is nothing to show that Ujagar Singh had inherited the same from his father, the question is as to whether the said property was ancestral in the hands of Pritam Singh *qua* the plaintiff.

10. Here itself, it may be noticed that suit property has been inherited



by plaintiff Balwant Singh from his father Pritam Singh, who had expired after coming into force of the Hindu Succession Act, 1956.

11. In ***“Arshnoor Singh v. Harpal Kaur” AIR 2019 Supreme Court 398***, Hon’ble Supreme Court was confronted with the question as to whether the suit property was ancestral in the hands of Inder Singh, who had inherited it from his father Lal Singh on his death and whose death had taken place prior to coming into force of the Hindu Succession Act, 1956. It was held by Hon’ble Supreme Court as under:-

“7. With respect to the first issue, it is the admitted position that Inder Singh had inherited the entire suit property from his father Lal Singh upon his death. As per the Mutation Entry dated 16.01.1956 produced by Respondent No. 1, Lal Singh’s death took place in 1951. Therefore, the succession in this case opened in 1951 prior to the commencement of the [Hindu Succession Act, 1956](#) when Inder Singh succeeded to his father Lal’s Singh’s property in accordance with the old Hindu Mitakshara law.

7.1. ***Mulla in his commentary on Hindu Law (22nd Edition)*** has stated the position with respect to succession under Mitakshara law as follows:

Page 129 - “A son, a grandson whose father is dead, and a great grandson whose father and grandfather are both dead, succeed simultaneously as single heir to the separate or self-acquired property of the deceased with rights of survivorship.”

Page 327 - “All property inherited by a male Hindu from his father, father’s father or father’s father’s father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great grandsons of the person who inherits it, acquire an interest, and the rights attached to such property at the moment of their birth.

A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son’s sons, and son’s son’s sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property.” (emphasis supplied)

7.2. In [Shyam Narayan Prasad v. Krishna Prasad & Ors., \(2018\) 7 SCC 646](#), this



Court has recently held that :

“12. It is settled that the property inherited by a male Hindu from his father, father’s father or father’s father’s father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship.”

(emphasis supplied)

7.3. Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors up to three degrees above him, then his male legal heirs up to three degrees below him, would get an equal right as coparceners in that property.

7.4. In [*Yudhishter v. Ashok Kumar, \(1987\) 1 SCC 204*](#), this Court held that :

“11. This question has been considered by this Court in [*Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors. \[1986\] 161 ITR 370 \(SC\)*](#), where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by [Section 8](#) of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by [Section 8](#), he does not take it as Karta of his own undivided family but takes it in his individual capacity.”



(emphasis supplied)

7.5. [After the Hindu Succession Act, 1956](#) came into force, this position has undergone a change. Post – 1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired property, and does not remain coparcenary property.

7.6. If succession opened under the old Hindu law, i.e., prior to the commencement of the [Hindu Succession Act, 1956](#), the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis à vis his male descendants up to three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the [Hindu Succession Act, 1956](#).

7.7. In the present case, the succession opened in 1951 on the death of Lal Singh. The nature of the property inherited by his son Inder Singh was coparcenary in nature. Even though Inder Singh had effected a partition of the coparcenary property amongst his sons in 1964, the nature of the property inherited by Inder Singh's sons would remain as coparcenary property qua their male descendants up to three degrees below them.

7.8. The judgment in ***Uttam v. Saubhag Singh (supra) [AIR 2016 SC 1169: 1 (2016) 4 SCC]*** relied upon by the Respondents is not applicable to the facts of the present case. In Uttam, the appellant therein was claiming a share in the coparcenary property of his grandfather, who had died in 1973 before the appellant was born. The succession opened in 1973 after the [Hindu Succession Act, 1956](#) came into force. The Court was concerned with the share of the appellant's grandfather in the ancestral property, and the impact of [Section 8](#) of the Hindu Succession Act, 1956. In light of these facts, this Court held that after property is distributed in accordance with [Section 8](#) of the Hindu Succession Act, 1956, such property ceases to be joint family property in the hands of the various persons who have succeeded to it. It was therefore held that the appellant was not a coparcener vis à vis the share of his grandfather.



7.9. In the present case, the entire property of Lal Singh was inherited by his son Inder Singh as coparcenary property prior to 1956. This coparcenary property was partitioned between the three sons of Inder Singh by the court vide a decree of partition dated 04.11.1964. The shares allotted in partition to the coparceners, continued to remain coparcenary property in their hands qua their male descendants. As a consequence, the property allotted to Dharam Singh in partition continued to remain coparcenary property qua the Appellant.”

12. It is clear from the aforesaid legal position that normally, whenever father gets a property from whatever source, from the grandfather or from any other source, being separate property or not, his son should have a share in it and it became part of the joint Hindu family of his son and grandson and other member, who form joint Hindu family with him. However, this position has been affected by Section 8 of the Hindu Succession Act, 1956. After coming into force of the said Act, when the son inherits the property in the situations contemplated by Section 8, he does not take it as Karta of his undivided family but takes it in his individual capacity.

13. In the present case, Pritam Singh had expired during 1983-84 i.e. after coming into force of the Hindu Succession Act, 1956 and then succession opened *qua* plaintiff in respect of the property held by Pritam Singh. Earlier the property had been inherited by Pritam Singh along with his brothers from his father Ujagar Singh. There is nothing on record to show that Ujagar Singh had inherited it from his father i.e. plaintiff's father's father's father. In these facts and circumstances, by applying the legal position explained by Hon'ble Supreme Court in *Arshnoor Singh's case (supra)*; *Yudhishter v. Ashok (supra)*; *Commissioner of Wealth Tax, Kanpur v. Chander Sen (supra)*; and *Uttam v. Subhag Singh (supra)*, it is held that suit property in the hands of Pritam Singh was not ancestral *qua* plaintiff Balwant Singh.

14. In Arshnoor's case, suit property was held to be ancestral as Inder Singh's father Lal Singh had inherited it 1951 i.e. prior to coming into force of



the Hindu Succession Act. However, in present case, firstly grandfather of plaintiff had not inherited suit property from his father; and secondly, succession for plaintiff Balwant opened in 1983-84 on the death of his father, so, it is held that suit property was not ancestral in the hands of Pritam Singh *qua* plaintiff Balwant Singh. Once it is so, there is no question of ascertaining, as to whether the sale deed dated 26.12.1985 in favour of Udham Singh- defendant, executed through process of the Court pursuant to the decree passed in a suit for specific performance filed by Udham Singh defendant (*appellant herein*) was null and void or not, on account of the fact that it was without legal necessity. Since the suit property was not ancestral and rather, it was self-acquired property in the hands of Pritam Singh, the father of the plaintiff, therefore there is no question of the impugned sale deed being declared as null and void on the ground of being without legal necessity or not an act of good management.

15. Consequently, the impugned judgment passed by the Appellate Court is hereby set aside. The judgment of the trial Court, dismissing the suit of the plaintiff-respondent is hereby restored but for different reasons. The suit is being dismissed, not because the suit property was ancestral and plaintiff failed to prove the impugned sale deed to be not for legal necessity; rather, the suit is being dismissed, as plaintiff has utterly failed to prove the suit property to be ancestral in nature.

16. Consequently, the present appeal is hereby accepted. The suit of the plaintiff-respondent is hereby dismissed. Parties are left to bear their own costs.

(DEEPAK GUPTA)
JUDGE

March 03, 2025

Neetika Tuteja

Whether speaking/reasoned?	Yes
Whether reportable?	Yes