(228)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4956-2016 (O&M)
Reserved on:- 11.08.2025
Pronounced on:- 26th August, 2025

Kamal Singh through LR Devi @ Jayanti and others

...Appellant(s)

Versus

Hem Lata and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Keshav Pratap Singh, Advocate,
Mr. Namish Sodhi, Advocate,
for the appellants.

Mr. Parveen Kumar, Advocate,
for Mr. Abhimanyu Singh, Advocate,
for respondents No. 1 & 2.

* * * *

VIRINDER AGGARWAL, J.

1. Respondents No. 1 and 2 – plaintiffs filed a suit for declaration and permanent injunction claiming that defendant No. 2 their father was co-owner in possession of agricultural land to the extent of 237/951 share out of the total land measuring 47 kanals 11 marlas fully detailed and described in the plaint situated within the revenue estate of village Ladpur, Tehsil Palwal, District Faridabad.

2. The suit property is ancestral co-parcenary and joint Hindu Family of the plaintiffs. Defendant No. 2 was karta. The plaintiffs being daughters of karta are co-parceners. The relationship of the plaintiffs and defendant No. 2 was not cordial. They were turned out of home alongwith their mother and defendant No. 2 their father even did not attend their marriages and had not

provided any financial help. Defendant No. 1 is brother of defendant No. 2. He used undue influence on defendant No. 2 and procured a sale deed of the suit property for a consideration of Rs. 7,78,000/- vide vasika No. 6317 dated 18.10.2007. The same is illegal, null and void. Defendant No. 2 always used to remain under influence of liquor and was not of sound disposing mind at the time of registration of the sale deed. He had no legal necessity to sell the suit land. The market value of the property was to the tune of Rs. 25,00 000/- per acre. No sale consideration passed from defendant No. 1 to defendant No. 2. Defendant No. 1 attempted to take forcible possession of the suit property on 25.10.2007. The plaintiffs came to know about the sale deed. Hence the suit.

3. The suit was contested by the appellant-defendant No. 1 claiming that the plaintiffs had no right in the suit property. It was denied that the suit property is ancestral co-parcenary and HUF. It was claimed that parties are governed by customary law of Rajputs and the plaintiffs cannot be considered to be co-parceners. Defendant No. 2 was in need of money and due to that reason he sold the suit land to the answering defendant. Furthermore, no income was generated from the suit property and defendant No. 2 represented to the answering defendant that he had spent a large amount of money on the marriages of respondents No. 1 and 2 – plaintiffs and he required money for his own treatment. The answering defendant believing the representation of defendant No. 1 purchased the suit property for a consideration of Rs. 7,78,000/- and the suit was prayed to be dismissed.

4. Defendant No. 2 also filed written statement contesting the suit of the plaintiffs on the same lines.

5. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiffs are co-owners in possession of the land in dispute and defendant No. 1 has got no right, title or interest whatsoever in the same? OPP

2. Whether impugned sale deed, dated 18.10.2007 bearing vasika No. 6317 in favour of the defendant No. 1 qua suit land is illegal, null and void and not binding upon the rights of the plaintiffs and liable to be set aside? OPP

3. Whether the plaintiffs are entitled for the decree of permanent injunction as prayed for on the grounds mentioned in the plaint? OPP

4. Whether the suit is not maintainable in the present form? OPD

5. Whether plaintiffs have got no locus standi and cause of action to file the present suit? OPD

6. Whether the plaintiffs have not come with clean hand and have concealed and suppressed the material facts from the court? OPD

7. Whether suit has not been properly valued for the purposes of court fees and jurisdiction? OPD

8. Whether plaintiffs are estopped by their own act and conduct from filing the present suit? OPD

9. Relief.

6. In order to prove the case, parties were given opportunities to lead evidence and after hearing arguments, the learned Additional Civil Judge (Senior Division), Palwal vide judgement dated 31.10.2013 decreed the suit and declared the plaintiffs to be co-parceners of the suit property and the sale deed in favour of the appellant-defendant No. 1 as illegal, null and void and ineffective qua the rights of the plaintiffs and the appellant-defendant No. 1 was restrained from alienating the suit land or creating any charge over the suit land.

7. Aggrieved, the appellant-defendant No. 1 filed first appeal before the learned Additional District Judge (1), Palwal which was dismissed vide judgement and decree dated 04.03.2016.

8. Aggrieved by the concurrent judgements and decrees of both the Courts below, the present appeal has been filed.

9. Notice was served upon the respondents.

10. Record requisitioned.

11. Learned counsel for the appellants argued that both the Courts below have mis-read, mis-construed and mis-applied the pleadings and evidence on record and the judgements have been passed merely on the basis of surmises and conjectures. Both the Courts below have ignored the fact that mother of respondents No. 1 and 2 – plaintiffs has inherited the suit property from their father and it has been wrongly held that the suit property is ancestral and co-parcenary property of joint Hindu Family. Relinquishment Deed Exhibit DW1/A has been wrongly ignored by the learned Civil Judge and that finding has been affirmed by the learned first Appellate Court. The reason given for ignoring the Relinquishment Deed is that the same was not pleaded, whereas evidence is not required to be pleaded. So, the impugned judgements and decrees be set aside and the appeal be allowed.

12. On the other hand, learned counsel for respondents 1 and 2 argued that there is no illegality, infirmity in the concurrent judgements of both the Courts below and both the Courts below have rightly concluded that the suit property is ancestral and co-parcenary property of joint Hindu Family as father of Bir Singh has inherited the same from his father Bhagwana as in Jamabandi Exhibit P12 Bhagwana is shown to be owner in possession being a co-sharer in the suit land alongwith Hari Singh and it was rightly recorded that the suit property was ancestral and co-parcenary property in the hands of father of the defendants and the sale deed was rightly held to be without legal necessity. So, the appeal be dismissed and findings recorded by both the Courts below be affirmed.

13. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgement of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others Vs Chandrika and others*** (2016) 6 SCC 157 followed by the judgements in the case of ***Kirodi (since deceased) through his LR Vs Ram Parkash and others*** (2019) 11 SCC 317 and ***Satender and others Vs Saroj and others*** 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgements, no question of law is required to be framed.

14. The learned Civil Judge has held the suit property to be ancestral and co-parcenary property on the ground that in written statement defendant No. 1 has nowhere denied that the suit property was ancestral in nature. Rather, defendant No. 1 has taken a plea that parties to the suit are governed by customary law and Relinquishment Deed Exhibit DW1/A was discarded on the ground that the same is beyond pleadings. Report of Halqa Patwari Exhibit PW4/1 was taken into consideration to prove that the suit property was ancestral in nature and furthermore in Relinquishment Deed Exhibit D7 executed by defendant No. 2 in favour of his wife (Vidya) mother of the plaintiffs, the suit property was admitted by defendant No. 2 to be ancestral in nature.

15. As regards the Relinquishment Deed Exhibit DW1/A is concerned, the same has been discarded merely on the ground that the same is beyond pleadings.

16. The law regarding pleadings is contained in Order VI of the Code of Civil Procedure, 1908. Rule 2 of Order VI of CPC is relevant for the decision of the appeal which reads as under:-

> *"[2. Pleading to state material facts and not evidence.—(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.*
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> *(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.*
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> *(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.]"*

17. As per Rule 2(1) of CPC, pleading is required to contain only a statement in a concise form of material facts and it is specifically stated in that Rule that evidence is not required to be pleaded. Now, in the written statement, defendant No. 1 has pleaded that the suit property is not ancestral property of joint Hindu Family.

18. In para 3 of the written statement, it has been pleaded by defendant No. 1 as under:-

> *"3. It is denied that the suit land stated in para No. 1 of the plaint was the ancestral coparcenary and joint Hindu Family property of the plaintiffs."*

19. Learned Courts below have wrongly recorded factually that defendant No. 1 has nowhere denied that the suit property was ancestral and co-parcenary property of joint Hindu Family, whereas it has been specifically denied so as has been reproduced above. So, once this material fact in concise form has been pleaded by the appellant-defendant No. 1 in his written statement, he was not required to plead the evidence with which he was required to prove this material fact that the suit property is not ancestral and co-parcenary property of joint Hindu Family. As such, it cannot be held that the

Relinquishment Deed, if not pleaded in the written statement, cannot be taken into consideration.

20. Learned counsel for respondents No. 1 and 2 – plaintiffs argued that even if the Relinquishment Deed is taken into consideration, then also, it would not change the nature of the suit property and has relied upon the law laid down by a Full Bench of Andhra Pradesh High Court in ***Katragadda China Anjaneyulu and another Vs Kattragadda China Ramayya and others*** AIR 1965 Andhra Pradesh 177, where in paras No. 26 and 27, Andhra Pradesh High Court has relied upon the judgements of Privy Council and the Hon'ble Apex Court to conclude that Relinquishment Deed would not change the nature of the property. The same is reproduced as under:-

> *"26. There is abundant authority for this proposition. In Venkatapathi Raju v. Venkatanarasimha Raju, ILR (1937) Mad 1 at p. 7 : (AIR 1936 Privy Council 264 at p. 267) a member of a Hindu undivided family governed by the Mitakshara law severed his connection with the family, relinquishing his interest therein and went away to another village wherein he settled permanently. After his departure he and his descendants had nothing to do with the joint family. The question arose in a litigation, started by the descendants of one of his brothers, whether the separation of that member had affected the status of the other members of the family. Answering it in the negative, their Lordships of the Privy Council stated thus :-*
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> > *"It is settled rule that when the members of a family hold the family estate in defined shares, they cannot be held to be joint in estate. But no definement of shares need take place when, the separating member does not receive any share in the estate but renounces his interest therein. His renunciation merely extinguishes his interest in the estate, but does not affect the status of the remaining members quoad the family property and they continue to be coparceners as before. The only effect of renunciation is to reduce the number of the persons to whom shares would be allotted, if, and when, a division of the estate takes place."*
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> *(27) This principle is adopted by the Supreme Court in Rukhniabai v. Lakminarayan, AIR 1960 Supreme Court 335. Speaking for the Court, Subba Rao, J. observed :*
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> > *"A member need not receive any share in the joint estate but may renounce his interest therein; his renunciation merely extinguishes his interest in the estate but does not affect the status of the remaining members vis-a-vis the family property"."*

21. No doubt, when a member of joint Hindu Family relinquishes his share out of the joint Hindu Family, then the nature of property in the hands of

other members of joint Hindu Family would not change. But, the position would be different if vide Relinquishment Deed a co-parcener has transferred his share to specific members of the family, then the share of the person relinquishing in the hands of the person to whom the share is transferred would not be ancestral and co-parcenary property.

22. The Hon'ble Apex Court in ***C.N. Arunachala Mudaliar Vs C.A. Muruganatha Mudaliar and another,*** AIR 1953 SC 495 has held as under:-

> *It is obvious, however, that the son can assert this equal right with the father only when the grandfather's property has devolved upon his father and has become ancestral property in his hands. The property of the grandfather can normally vest in the father as ancestral property if and when the father inherits such property on the death of the grandfather or receives it by partition, made by the Grandfather himself during his lifetime. On both these occasions the grand father's property comes to the father by virtue of the latter's legal right as a son or descendant of the former and consequently it becomes ancestral property in his hands. But when the father obtains the grandfather's property by way of gift, he receives it not because he is a son or has any legal right to such property but because his father chose to bestow a favour on him which he could have bestowed on any other person as well. The interest which he takes in such property must depend upon the will of the grantor. A good deal of confusion we think has arisen by not keeping this distinction in mind. To find out whether a property is or is not ancestral in the hands of a particular person, not merely the relationship between the original and the present holder but the mode of transmission also must be looked to; and the property can ordinarily be reckoned as ancestral only if the present holder has got it by virtue of his being a son or descendant of the original owner. The Mitakshara is fairly clear on this point. It has placed the father's gifts under a separate category altogether and in more places than one has declared them exempt from partition.*

23. Now keeping view all this, the Relinquishment Deed Exhibit DW1/A has to be seen. This Relinquishment Deed clearly shows that Bir Singh son of Bhagwana, who was the grand-father of respondents No. 1 and 2 – plaintiffs and father of the defendants, has transferred the suit land to the extent of 23 kanals 19 marlas in favour of his sons Kamal Singh and Kiran Pal without any consideration and he has specifically recited in the Deed that from then onwards he or his legal heirs has no connection with that land. So, this clearly shows that intention of Bir Singh was not to relinquish his share in the joint Hindu Family property. Rather, vide this Deed, he has transferred the land

to the extent of 23 kanals 19 marlas in favour of the defendants. So, once defendant No. 2 has taken the land on the basis of Transfer Deed from his father, though the same has been referred as Relinquishment Deed, but actually it is Transfer Deed, the property in the hands of defendant No. 2 would not be ancestral and co-parcenary property of joint Hindu Family. Rather, defendant No. 2 would take it absolutely and the other co-parceners i.e. his daughters would not have any birth-right in the same and defendant No. 2 has complete control over the same. He has absolute power to transfer the same and both the Courts below committed a mistake by over-looking the Relinquishment Deed and by not taking into consideration the fact that the property has not devolved upon defendant No. 2 from his father. Rather, defendant No. 2 has taken the same on the basis of Transfer Deed Exhibit DW1/A from his father. As such, the findings of the Courts below that the suit property in the hands of defendant No. 2 would be ancestral and co-parcenary property is certainly wrong.

24. As regards admission of defendant No. 2 of the suit property being ancestral property is concerned, a Coordinate Bench of this Court in ***Hari Kishan and others Vs Rati Ram and others,*** 2018 (4) PLR 783 has held as under:-

> *"Mere assertion in the plaint and admission thereof in the written statement would not clothe the Court to presume ancestral nature of the property. The ancestral nature of the property has to be proved in terms of excerpt, pedigree table and as per requirement of Volume 1, Chapter 9, Rules 5 and 6 of High Court Rules and Orders. As per para No.232 of Mullah's Law, the plaintiffs who have asserted that the property was ancestral in nature, have to prove that the same has devolved upon them from three generations, in essence, they are the fourth generation. The admission of the defendants would not change the legal position. There is no dispute with regard to aforesaid proposition."*

25. In para 21 of the judgement rendered by a Coordinate Bench of this Court in RSA No. 2701 of 2010 titled ***Ramesh Kumar and others Vs Madan Mohan and another*** (decided on 17.03.2017), it has been stated that

mere admission of defendant is not sufficient to hold the property to be ancestral.

26. Similarly, in a bunch of cases the lead case being ***Tehal Singh and another Vs Shamsher Singh (since deceased) through LRs,*** 2016(2) LAR 87, it was held as under:-

> *"It is settled law that the person, who has acquired the property by dint of his hard labour, can deal with the same in the manner he wants. Mere assertion in the plaint and admission thereof in the written statement would not clothe the nature and the character of the property as ancestral. There has to be a direct, cogent and positive evidence to show that the property at the hands of Tehal Singh was ancestral."*

27. So, both the Courts below were wrong in presuming the suit property as ancestral and co-parcenary property of joint Hindu Family on the basis of admission of defendant in the Relinquishment Deed Exhibit D7.

28. Once it is proved on record that the suit property was not ancestral and co-parcenary property of joint Hindu Family, then respondents No. 1 and 2 – plaintiffs had no right to challenge the sale deed to be vitiated by fraud as defendant No. 2 their father was alive at that time and it was only defendant No. 2 who could have raised the plea of fraud and respondents No. 1 and 2 – plaintiffs had no right to plead and prove fraud in execution of the sale deed during the life-time of defendant No. 2. As such, the judgements and decrees passed by both the Courts below are not sustainable and are liable to be set aside and the findings recorded by the learned Courts below on issues No. 1, 2 and 3 are not sustainable. The same are set aside and all these issues are decided in favour of the appellants-defendants.

29. Similarly, findings on issues No. 5 to 8 are not sustainable and are set aside and these issues are also decided in favour of the appellants-defendants.

30. So, the appeal is allowed and the judgements and decrees passed by both the Courts below are set aside and suit filed by respondents No. 1 and 2- plaintiffs stands dismissed with no order as to costs.

(VIRINDER AGGARWAL)
JUDGE

26th August, 2025
Amodh Sharma

Whether speaking/reasoned	√ Yes/No
Whether reportable	√ Yes/No