IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

224 **RSA-2416-2017 (O&M)**
Date of decision: 28.04.2025

Dalip Singh **...Appellant(s)**

Vs.

Beant Kaur and another **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.S.S.Momi, Advocate for the appellant.

Mr. Lekhraj Sharma, Advocate with
Mr. Abhishek Sharma, Advocate for
respondent No.1.

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NIDHI GUPTA, J.

The defendant is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiffs/respondents herein, for maintenance under Sections 19 and 20 of the Hindu Adoption & Maintenance Act 1956 (hereinafter referred to as "the Act") and permanent injunction, has been decreed by both the Courts below.

2. Brief facts of the case are that the plaintiff No.1 was married to Gurbax Singh/son of the appellant on 24.03.1999. Plaintiff No.2 was born out of their wedlock, who has been residing with his mother-plaintiff No.1 throughout. Gurbax Singh had died on 18.03.2001. It was pleaded by the plaintiff that thereafter within 6 months of death of Gurbax Singh, she was thrown out of her matrimonial home along with her minor son. It was

further pleaded that the defendant was owner in possession of 35K 14M as described in the plaint along with tubewell bearing account No. NB2/153; residential house along with electric connection bearing account No. SB14/1989 as per jamabandi. It was further alleged that the defendant had sold the aforesaid tubewell and house etc. for a sale consideration of Rs.13,77,912/- vide registered Sale Deed dated 03.5.2001 and registered on 04.05.2001 to Bhajan Singh. From the said sale consideration, defendant had purchased various other lands. On the other hand, Plaintiffs had no movable or immovable property in their names and were residing at the parental house of plaintiff No.1. The plaintiffs were unable to maintain themselves; defendant had refused to share any property of the matrimonial home, though the husband of plaintiff No.1 was entitled to half share of the total property as defendant had only 2 sons. It was alleged that the defendant had also refused to return dowry articles of the plaintiff No.1. Accordingly, plaintiffs prayed for maintenance by way of the suit which was filed on 10.08.2011.

3. The said suit was resisted by the defendant by filing written statement stating that the plaintiffs had left matrimonial home on their own accord and without any reason 20-25 days after the death of Gurbax Singh. The defendant was owner in possession of only 2 acres of land upon which the defendant and his family members were totally dependant. Hence, dismissal of the suit was prayed for.

4. Vide judgment and decree dated 20.09.2013, the learned trial Court had decreed the suit of the plaintiffs with costs holding that the

defendant is liable to pay Rs.3,000/- p.m. to the plaintiffs from the date of filing suit till the date as and when plaintiff No.2 would become self dependant to earn his income. The appeal filed by the defendant was dismissed by the learned lower appellate Court vide judgment and decree dated 31.01.2017; thereby upholding the findings/ judgment of the learned trial Court. Hence, present second appeal by the defendant.

5. The only ground on which learned counsel for the defendant challenges the impugned judgments and decrees is by submitting that the appellant has only 2 acres of land. It is submitted that it is impossible for the appellant to maintain himself and his family on the said land. The appellant barely derives income of only Rs.40,000/- p.a. from his small holding of 2 acres of land. If the decreed amount of Rs.36,000/-p.a. is paid to the plaintiffs, then the appellant is left with only Rs.4,000/- p.a. which is not sufficient to maintain the appellant and his family. Moreover, the appellant is about 76 years of age, and he would not be able to purchase his medicines for the whole year from the meagre amount of Rs.4,000. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees be set aside.

6. Learned counsel for the respondents vehemently opposes the prayer made on behalf of the defendant and submits that the respondent No.1 was thrown out of her matrimonial home along with minor son barely six months after the death of Gurbax Singh. Respondent No.1 has single handedly brought up the minor child without any assistance from the appellant. Even the brother of plaintiff No.1 has

expired now. As such plaintiffs have no source of income or means to maintain themselves. Moreover, it was duly proven on record that after the death of Gurbax Singh, the appellant had sold the land in his name for handsome amount. The appellant had received 28K 16M of land in village Machharuli in lieu of the land left in Pakistan. This is evident from the jamabandi for the year 1954-1955 Ex.P1.It is contended that as the said property was received by the defendant in lieu of the property left by him in Pakistan which belonged to his ancestors, thus the land in India received by the defendant was ancestral land. It is submitted that the respondents being the widow and son of Gurbax Singh-son of the appellant, they are entitled to their share in the property of the appellant. Nothing has been granted by way of maintenance to the respondents since 2011.It is accordingly prayed that the present appeal be dismissed.

7. No other argument is raised on behalf of the parties.

8. I have heard learned counsel for the parties and perused the case file in great detail.

9. I find no merit in the submissions advanced on behalf of the defendant. The plaintiffs are the Class-1 heirs of Gurbax Singh. As such, plaintiffs have a right in the property of the defendant. This is especially so as it has been proven on record that the land measuring 28K 16M was received by the defendant in village Machharuli in lieu of the land left by him in Pakistan. This is evident from the jamabandi for the year 1954-1955 Ex.P1. As the said property was received by the defendant in lieu of the property left by him in Pakistan which belonged to his ancestors, thus the

land in India received by the defendant was ancestral land. At this stage, reference is made to a Division Bench judgment of this Court passed in ***"Maya Ram and others vs. Satnam Singh and another" Law Finder Doc Id # 61621*** wherein it is held that getting proprietary rights in the land in dispute in lieu of land which was ancestral qua his son-held that the land in dispute is also ancestral qua the son.

10. In any event, the defendant has himself admitted in para 8 of present Grounds of Appeal that he was owner of 28K 16M of land. It is stated in para 9 of the present Grounds of Appeal that the said land measuring 28K 16M was sold by the defendant; whereafter he had purchased about 16K of land in village Ugala as per Jamabandi Ex.P10.

11. In the said paras 8 and 9 of the Grounds of Appeal filed by the appellant before this Court, it is pleaded by the appellant that:

> "8. *That in appeal before the learned lower appellate court, it was the case of the appellant/defendant that the learned trial court wrongly decided issue no.1 in favour of respondent/plaintiff. It was proved on record that the appellant/defendant had inherited 35 kanal 4 marla land in village Sulakhni in lieu of property left in Pakistan and appellant/ defendant had sold the said land for a sale consideration of Rs. 13,77,912/- to one Bhajan Singh and out of said consideration Rs. 8 lacs was deposited in the Bank. With the balance of sale consideration the appellant/defendant purchased land in village Machhrauli which was duly proved on record in the shape of jamabandi for the year 1954-1955 of village Sulakhni and the same is Ex. P1. It is very much in this jamabandi that DAKHAL of land measuring 28 kanal 16 marla was given to*

appellant/defendant and DAKHAL of land measuring 11 kanal 4 marla was given to Jeeta, the brother of appellant/defendant. There is not even a single word written in the DAKHAL that the property was inherited property. From the perusal of the jamabandi, out of total land 7 kanal 13 marla was CHAHI and 20 kanal 8 marla was SALAB and 15 marla was gair mumkin khal which is clear from Jamabandi Ex. P2. Therefore, it was proved on record that the appellant/defendant was not owner and in possession of the land measuring 35 kanal 4 marla in village Sulakhni whereas it was proved on record from Ex. P1 & Ex. P2 that the appellant/defendant was owner of 28 kanal 16 marla and not 35 kanal 4 marla.

9. That further it was proved on record that vide the mutation Ex. P-5, the appellant/defendant sold his entire land of village Sulakhni for a consideration of Rs. 36,500/- to Balbir Singh, Balkar Singh etc. and purchased land in village Machhrouli for consideration of Rs. 35,000/- vide mutation no. 809 of village Machhrauli, which is Ex. P-6. Further after selling the land of Machhrauli, the appellant/defendant purchased about 16 kanal land in village Ugala, Tehsil Barara, District Ambala for which the relevant jamabandi is Ex. P-10 and the evidence nowhere prove that the appellant/defendant sold the land, allegedly for a total sale consideration of Rs. 13,77,912/-. Further the alleged witness Bhajan Singh was not produced by the respondents/plaintiffs."

12. From the above facts, it is clear that the defendant has himself admitted selling 28K 16M of land; and presently being owner of 16K of land in village Ugala as per jamabandi for the year 2005-2006 Ex.P10. These sales of land have been made by the appellant vide Sale Deeds dated 03/04.05.2001, 11.05.2001 and 17.05.2001 i.e. immediately

after the death of his son Gurbax Singh on 18.3.2001. This would indicate that the sales were hurriedly executed by the appellant only to deprive the plaintiffs from their rights in the property.

13. It has further been found by learned Courts below that as per the evidence available on file, it clearly reflects that the defendant had deprived the plaintiffs from maintenance allowance, which was his legal obligation. Plaintiffs being the Class-1 heirs of Gurbax Singh have every right in the property of the appellant. It was in this background that learned lower appellate Court had created a charge on the property owned and possessed by the defendant as there was nothing on file to remotely indicate that plaintiff No.1 has any source of income from which she is able to maintain herself and her minor son. On the other hand, there is ample evidence on record showing that the defendant owned considerable agricultural land from which he had earnings and therefore, he was liable to maintain the plaintiffs.

14. Further, Section 19 of the Act provides as under: –

> *"**19. Maintenance of widowed daughter-in-law.—***
>
> *(1)A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law:*
>
> *[Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance—]*
>
> *(a)from the estate of her husband or her father or mother, or*
>
> *(b)from her son or daughter, if any, or his or her estate.*
>
> *(2)Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the*

daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law."

15. It has nowhere been shown on record that the plaintiffs had any source of income. As such, being the grandfather and father-in-law of the plaintiffs, it was the bounden duty of the appellant to maintain them; and to maintain plaintiff No.2 till he attains the age of majority.

16. It appears that during the course of trial, a settlement was arrived at between the parties pursuant to which defendant had paid a sum of Rs.1 lac to the plaintiff No.1. However, although initially the said amount was received by plaintiff No.1 subsequently, she withdrew from the said settlement offered by the defendant in the interest of the then minor plaintiff No.2. The said amount of Rs.1 lac is stated to be lying deposited in the treasury. It was directed by the learned trial Court that the said amount will be adjusted at the time of payment of arrears. That shall be so in the pending execution proceedings.

17. In view of the discussion above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed.**

18. Pending applications, if any, stand disposed of.

28.04.2025 **(NIDHI GUPTA)**
Divyanshi **JUDGE**

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