



the year 1987 leaving behind plaintiff No.1 along with Gian Singh, Bhan Singh, Milkha Singh, Umrao Singh and Agya Singh sons and Balwinder Kaur daughter as her legal heirs. Share left by Labh Singh was to be inherited in equal share by Gurdial Kaur, Bachan Kaur and Hira Singh being his Class I legal heirs as his brother and sisters. After death of Labh Singh, Gurdial Kaur and Bachan Kaur came in possession of the shares of Labh Singh to the extent of their share. As per plaintiffs, defendant No.1 sold the residential sites to different persons and has gifted part of the house in question to defendant No.2. Challenge is to the gift deed dated 07.04.2005 executed by defendant No.1 claiming that the same is not binding to the extent of share of the plaintiffs.

3 Suit was contested by defendants No.1 and 2 by filing joint written statement. It was denied that Rur Singh was the owner of the house in question. Defendant No.1 claimed to be the absolute owner of the house. It was further pleaded that Gurdial Kaur died in the year 1987 before Labh Singh and thus children of Gurdial Kaur had no right in any estate left by Labh Singh. It was further pleaded that gift deed dated 07.04.2005 is a legal and valid document executed by defendant No.1 in favour of defendant No.2. As per separate written statement filed by defendant No.3 the house in question was in the name of Hira Singh son of Rur Singh.

4 On the basis of the pleadings, suit filed by the plaintiffs was put to trial framing following issues :-

“1. Whether the plaintiff is entitled for declaration as prayed for? OPP.

2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP



3. *Whether the present suit is not maintainable? OPD.*
4. *Whether the plaintiffs have no locus standi to file the present suit? OPD*
5. *Whether the present suit is bad for mis joinder of necessary parties? OPD*
6. *Whether the suit has not been properly valued for the purpose of Court fees? OPD*
7. *Whether the plaintiffs are estopped from their own act and conduct? OPD*
8. *Whether the plaintiff has no cause of action to file the present suit? OPD*
9. *Whether this Court has no jurisdiction to entertain the present suit? OPD*
10. *Relief.”*

5 Both the Courts below concurrently found that the plaintiffs failed to prove that the property was jointly held by Hira Singh and Labh Singh or was owned by Rur Singh from which it was inherited by Labh Singh and Hira Singh jointly and dismissed the suit filed by the plaintiffs.

6 Learned counsel for the appellant has assailed the findings recorded by the Courts below claiming that the Courts erred in denying right of the plaintiffs and erred in misreading the evidence on record. Mr. Rahul Sharma, Advocate has referred to the statement made by Surjit Kaur wife of Hira Singh to submit that though she claimed that the house was purchased by her husband Hira Singh from his own funds but she has not brought any evidence on record to prove the same. He further refers to the statement of DW1 where she admitted that Labh Singh used to reside with them and had food with them as co-owner of the house. He relies upon



judgment rendered by Madras High Court in the case of *P.Kumar Vs. State of Tamil Nadu rep. by the District Collector, Salem & ors.*, bearing *SA Nos.1025 to 1028 of 2004, decided on 08.12.2010* to submit that adverse inference has to be drawn against a party who withholds best piece of evidence. He further relies upon ratio of law laid down in *Adivappa & ors. Vs. Bhimappa & ors., (2017) 9 SCC 586* to submit that there lies a legal presumption that every Hindu Family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family.

7 *Per contra*, learned counsel for the respondents submits that there is no evidence on record to prove that the property in question was inherited by Hira Singh from his father Rur Singh. Plaintiffs failed to prove any evidence to the said effect. Pure finding of fact has been recorded by the Courts below which should not be interfered in the second appeal.

8 I have heard learned counsel for the parties and have gone through the records of the case.

9 The entire case of the plaintiffs is on the presumption that the suit property was owned by Rur Singh after whose death the same was succeeded by defendant No.1-Hira Singh along with his brothers and sisters. No evidence has been brought on record to prove the same.

10 Counsel for the appellant has tried to persuade this Court to presume the said fact in the absence of any document to show that Hira Singh purchased the said property as claimed by DW1. Close scrutiny of the statement made by DW1 wife of Hira Singh shows that she specifically claimed that the title deed was available with her. In case the plaintiffs



wanted to dispute the said fact, she should have been asked to produce the same and cross examination should have been deferred at that stage. Despite the fact that she claimed title deed in favour of her husband, plaintiffs never asked her to produce the same. In view thereof, this Court finds that no adverse inference can be drawn against defendants as suggested by the counsel for the appellant. So far as the issue with respect to presumption regarding jointness of estate in a Joint Hindu Family is concerned, the Supreme Court in ***Kuppala Obul Reddy Vs. Bonala Venpata Narayan Reddy (dead) by LRs., (1984) 3 SCC 447*** observed as under :-

“xxx xxx xxx
There may be presumption that there is a Hindu Joint Family but there can be no presumption that the joint family possesses joint family properties
 xxx xxx xxx .”

11 In ***Sameer Kumar Pal Vs. Sheikh Akbar (2010) 11 SCC 777***

entire series of binding precedents was discussed to observe as under :-

“10. The appellants have relied on Mst. Rukhmabai v. Lala Laxminarayan & Others AIR 1960 SC 335 in which this court held that there is no presumption that any property whether moveable or immovable held by a member of a joint Hindu family is joint family property. The burden lies upon the person who asserts that a particular property is joint family property to establish that fact.

11. The appellants further relied on Kuppala Obul Reddy v. Bonala Venpata Narayan Reddy (dead) by LRs. (1984) 3 SCC 447 in which this court held that there were no pleadings as to the properties being joint properties and no issue as to joint family had been raised and there was no proper evidence to make out any case of the properties being joint family properties, was raised and no such



issue could possibly have been raised in absence of the pleadings. The court further held that in absence of any pleading and any issue and further in the absence of any proper evidence, the view expressed by the learned judge of the High Court that the properties were joint family properties is clearly unwarranted. There may be presumption that there is a Hindu Joint Family but there can be no presumption that the joint family possesses joint family properties.

12. The appellants further relied on Mudi Gowda Gowdappa Sankh v. Ram Chandra Ravagowda Sankh (1969) 1 SCC 386 wherein this Court held that, of course, there is no presumption that merely because the family is joint so the property is also joint. So the person alleging the property to be joint family property must prove it. In that case, this Court further held that the burden of proving that any particular property is joint family property is, therefore, in the first instance, upon the person who claims it to be coparcenary property. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. The Court carved out an exception and observed that, "this is, however, subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate." In Mudi Gowda Gowdappa Sankh (supra), this court heavily relied upon the ratio of Privy Council judgment in Randhi Appalaswami v. Randhi Suryanarayanamurti & Others ILR 1948 Mad 440 wherein the legal position of Hindu Law has been beautifully articulated by Sir John Beaumont. The relevant portion of the judgment is reproduced as under:

"Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any



item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property."

12 The ratio of law laid down by Supreme Court in ***Adiveppa's case supra*** relied upon by the counsel for the appellant can be applicable only if the plaintiff is successful in proving that the jointness of properties has been admitted and there is no proof of division. Question of proof of division will arise only when jointness of estate is proved. There being no evidence to prove that the properties are joint, Courts below rightly non-suited the plaintiffs. There is another aspect to the present *lis*. The plaintiffs in the present case are Class II legal heirs of Labh Singh being his sister's sons. Class II legal heirs in the Schedule appended to Hindu Succession Act, 1956 (for short 'the 1956 Act') have been enlisted as under :-

Class II

1. Father.

II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.

V. Father's father; father's mother.

VI. Father's widow; brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's father, mother's mother.



IX. Mother's brother; mother's sister.

Explanation.-- In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood."

13 Section 11 of the 1956 Act deals with distribution of property among heirs in Class II of the Schedule. The same reads as under :-

"11. Distribution of property among heirs in class II of the Schedule.—The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they, share equally."

14 Since Gurdial Kaur died in the year 1987 i.e. prior to death of Labh Singh, plaintiff No.1 has no right, title or interest in the property left behind by Labh Singh. As at that time siblings of Labh Singh were alive. Bachan Kaur died in the year 1998 i.e. after Labh Singh leaving behind Gurdev Singh, Angrez Kaur, Bhajan Kaur and Tej Kaur as her legal heirs. None of them has been impleaded as party to the present *lis*. Thus the suit is bad for *non-joinder* of necessary parties as well.

15 In view of above, finding no merits in the present appeal, the same is ordered to be dismissed.

16 Pending miscellaneous application, if any, shall also stand disposed off.

17.07.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No