(1974) 04 P&H CK 0028

High Court Of Punjab And Haryana At Chandigarh

Case No: Letter Patent Appeal No. 404 of 1972

Baboo Ram and Others	APPELLANT
Vs	
Bachni	RESPONDENT

Date of Decision: April 8, 1974

Acts Referred:

- Punjab Tenancy Act, 1887 - Section 59

Citation: AIR 1974 P&H 343

Hon'ble Judges: R.N. Mittal, J; P.C. Pandit, J

Bench: Division Bench

Judgement

P.C. Pandit, J.
The following pedigree table will be helpful in understanding the facts of this case:--

KAPOORA

_____|_____

| |

Harnama Telu Ram

| |

| Shrimati Bachni

| (Daughter) Plaintiff

_____|_____

| | | |

Babco Ram Banarsi Dass Karta Ram Ramji Dass

Defendant Defendant Defendant Defendant

No.1 No.2 No.3 No4

In 1950, Telu Ram died and his estate was mutated in favour of the sons of Harnama in 1952, even though the deceased had left a daughter Shrimati Bachni. That led to a suit in February, 1960, by Bachni for possession of the property in dispute which consists of agricultural land, 18 Kanals 131/2 Marlas in area, and one house. Her case was that Telu Ram, her father, had separated from his brother Harnama somewhere in 1932. The property in question had come to the share of her father and being his daughter, she was entitled to the same.

2. The suit was resisted by the defendants, who, apart from denying the relationship of the plaintiff with the deceased, also pleaded that the property in question was coparcenary and by the rule of survivorship they were entitled to it. The plaintiff, being the daughter, could not get any share in the said property, she being not a member of the coparcenary. Another plea taken was that when Telu Ram died, he had occupancy rights in the land in dispute, which devolved on them alone u/s 59 of the Punjab Tenancy Act, 1887. So far as the house was concerned, it was alleged that it was also coparcenary property.

3. The trial Court dismissed the suit, holding that the plaintiff was the daughter of the deceased, but the property was joint Hindu Family property, and a part of it were occupancy rights, which, on the death of Telu Ram, devolved on the defendants u/s 59 of the Punjab Tenancy Act. They, therefore, became owners of the same under the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953.

4. Aggrieved by this decision, the plaintiff went in appeal, which was dismissed by the Additional District Judge, who confirmed all the findings of the trial Court. Before the learned Judge, only the finding on Issue No. 2 was contested. The said issue was whether the property in suit was joint Hindu family property or not. Thereafter, the plaintiff came here in second appeal. The said appeal was heard by a learned Single Judge of this Court, who accepted the same and decreed the suit in its entirety. The learned Judge came to the conclusion that the Courts below were in error in holding that the property in dispute was joint Hindu family property according to the learned Judge, disruption took place in the family before the death of Telu Ram. That decision is being challenged by means of this letters patent appeal by the defendants.

5. The sole point for consideration in this case is whether the learned Single Judge in second appeal was right in law in setting aside the finding of fact recorded by the Lower Appellate Court to the effect that the property in dispute was joint Hindu Family property. The learned Judge, when this point was argued before him, came to the conclusion that the said finding was vitiated by an error of law. According to him, the Privy Council in AIR 1938 65 (Privy Council) , had observed:

"Under the Mitakshara School of Hindu Law, the partition of the joint estate consists in defining the shares of the coparceners in the joint property and it is not necessary that there should be an actual division of the property by metes and bounds.

The definition of shares may be proved inter alia by an entry in the Record of Rights showing the share of each member of the family.

Such an entry will be evidence of the severance of the joint status."

6. The learned Judge was of the view that the Courts below had not applied the law laid down by the Privy Council in the abovementioned authority and they were unnecessarily obsessed with the various circumstances, which were necessary to be taken into consideration for determining whether under the Customary Law of Punjab certain property was ancestral or not. It is conceded that if the finding of the Courts below is correct, them the plaintiff''s suit must be dismissed. If, on the other hand, the finding is vitiated and it is held that the property was not joint Hindu family property, then the plaintiff''s suit must succeed. It appears that a Bench decision of the Lahore High Court, consisting of Tek Chand and Abdul Rashid JJ; in Atma Ram v. Umar Ali AIR 1940 Lah 256 , was not brought to the notice of the learned Single Judge. In that ruling, the Privy Council authority in AIR 1938 65 (Privy Council) along with some earlier Privy Council decisions in Nageshar Bakhsh Singh v. Mt. Ganesha AIR 1920 PC 46 ; Bhagwani Kunwar v. Mohan Singh AIR 1925 PC 132 and AIR 1925 49 (Privy Council) , were considered and the learned Judges then observed:

"It cannot be presumed that the entry in the revenue papers showing members of a Hindu family as owning land in equal shares necessarily shows that they held it as co-owners and not as coparceners. Such an entry is only a piece of evidence which has to be considered along with other evidence in the case; standing alone, it is not sufficient to prove separation of status:"

That part of the above decision, which deals with the present point, was read to us in extenso and there the learned Judges observed that the mere specification of shares in the revenue records alone would not establish the disruption of a joint Hindu family. That being so, with great respect to the learned Single Judge, we are of the opinion that he in second appeal should not have interfered with a concurrent finding of fact recorded by the Courts below on the ground mentioned by him.

7. It may be stated that apart from Exhibit D. 15, which was an entry from the excerpt pertaining to 1945-46, in which the shares of the parties had been specified by the revenue officials, the learned Judge had in this connection also referred to three other documents; two of which were Exhibit D. 17(pedigree table of 1909-10) and Exhibit D-18(mutation dated 2nd March, 1952, effected on the death of Telu Ram) and the third document, which the learned Judge himself marked as C-1, was an entry from the Khana Shumari Register.

8. So far as the pedigree-table is concerned, there all that is mentioned is that some of the ancestors of the parties sold certain areas of land. As to when they effected these transactions is not clear from the entries in Exhibit D-17. As regards Exhibit D-18, as already mentioned above, that is the impugned mutation entered on the death of Telu Ram. Both these documents, therefore, do not advance the case of the plaintiff in any manner. Regarding exhibit C-1, an objection has been taken by the learned Counsel for the appellants that the same was exhibited at the time of the hearing of the regular second appeal and that should not have been done, unless there was an application under Order 41, Rule 27. Code of Civil Procedure, for bringing that document on the record. This procedure would have afforded an opportunity to the appellants to say as to whether that application should be granted or not. This apart, the said document is only an entry from the Khana Shumari Register, which has not been shown by the learned Counsel for the respondent as carrying any presumption of correctness. As I have already said, the main reliance by the learned Single Judge for disturbing the finding of fact was on Exhibit D-15, mentioned above.

9. Under these circumstances, we are of the opinion that this appeal has to be allowed, the judgment of the learned Single Judge reversed and that of the Lower Appellate Court restored. We order accordingly. The parties are, however, left to bear their own costs throughout.

R.N. Mittal, J.

10. I agree.

11. Appeal allowed.