

Gurmail Singh Vs Rajbir Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: June 30, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 2 Rule 2

Citation: (2014) 4 RCR(Civil) 397

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Advocate: Rahish Pahwa Dudeja, Advocate for the Appellant; Amit Rawal, Senior Advocate and S.S. Tiwana, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Kumar Jain, J.

This order shall dispose of three appeals bearing RSA No. 4068 of 2000 titled as ""Gurmail Singh v. Rajbir Singh

and another"", RSA No. 4069 of 2000 titled as ""Gurmail Singh v. Rajbir Singh and another"" and RSA No. 4288 of 2000 titled as ""Mohinder Kaur

v. Rajbir Singh and others ""as all the appeals have arisen from the same judgment and decree passed by the trial Court while deciding three suits,

namely, Civil Suit No. 212 of 15.6.1989 titled as Gurmail Singh v. Nirmal Singh and another; Civil Suit No. 560 of 27.3.1991 titled as Mohinder

Kaur v. Nirmal Singh and others; and Civil Suit No. 215 of 8.5.1990 titled as Gurmail Singh v. Nirmal Singh and others. In Civil Suit No. 212 of

15.6.1989 titled as Gurmail Singh v. Nirmal Singh and another, a declaration has been sought that the land measuring 37 kanals 16 marlas is

ancestral/coparcenary/Joint Hindu Family property and the decree dated 21.4.1988 passed in Civil Suit No. 92 of 1988 titled as Nirmal Singh v.

Dalip Singh, by Sub Judge IInd Class, Ludhiana, subsequent mutation No. 614 dated 23.6.1998 sanctioned in favour of Nirmal Singh and also

transfer of electric tubewell connection No. 5D-203 is null and void. In Civil Suit No. 560 of 27.3.1991 titled as Mohinder Kaur v. Nirmal Singh

and others, the aforesaid decree dated 21.4.1988 is under challenge and in Civil Suit No. 215 of 8.5.1990 titled as Gurmail Singh v. Nirmal Singh

and others, permanent injunction has been prayed for restraining the defendants from selling, mortgaging and changing the nature of the suit

property. In the 1st Suit bearing Civil Suit No. 212 of 15.6.1989, Nirmal Singh (Defendant No. 1) and Dalip Singh (Defendant No. 2) filed their

separate written statements, wherein it was alleged that the suit property is self acquired property of Dalip Singh (defendant No. 2) and plaintiff has

no locus standi to challenge the impugned decree. Gurmail Singh has been separated from the defendants for the last 18 years. The suit property

was purchased by Dalip Singh and his brothers Harcharan Singh and Anokh Singh from Maingal Singh. Dalip Singh also inherited the suit property

from Narain Singh son of Lal Singh by way of mutation No. 177 dated 27.5.1937 and inherited from Hardit Singh vide mutation No. 202 dated

6.5.1940. The plaintiff Gurmail Singh filed replication to each set of the written statement and on the pleadings of the parties as many as five issues

were framed including ""whether plaintiff and defendants constitute Joint Hindu Family and are coparceners of suit property as alleged and whether

decree dated 2.4.1988 is illegal, null and void?

2. In the Civil Suit No. 560 of 27.3.1991, the plaintiff also challenged decree dated 21.4.1988 alleging that the plaintiff and defendants No. 1, 2, 4

and 5 are the children of Dalip Singh and are governed by Hindu Law. The suit property is ancestral, which is inherited by Dalip Singh and could

not have been transferred by him by way of consent decree in favour of one of the sons. The suit was contested by defendants No. 4 and 5. It was

denied that the suit property is ancestral and the judgment and decree under challenge is illegal. In this suit also, as many as five issues were framed

in which the main issue was ""whether the plaintiff is entitled to declaration as prayed for""?

3. In the 3rd suit, namely, Civil Suit No. 215 of 8.5.1990, plaintiff Gurmail Singh, prayed for permanent injunction restraining Nirmal Singh from

alienating the suit property on the same ground that it is ancestral property in which the plaintiff has also right by birth. This suit was also contested

by the defendants in which a plea of Order 2 Rule 2 of the C.P.C. was also raised besides denying the averment that the property in dispute is

ancestral. The plaintiff filed replication and on the pleadings of the parties as many as six issues were framed in which the basis issue was ""whether

the plaintiff Gurmail Singh is in possession of the suit property and is entitled to seek permanent injunction?

4. The trial Court vide its order dated 17.7.1993 consolidated all the three suits and ordered that evidence would be recorded in Civil Suit No.

212 of 15.6.1989 titled as Gurmail Singh v. Nirmal Singh.

5. Plaintiff Gurmail Singh examined himself as PW 3, Harmesh Chander, Retired Kanungo as PW 1, Sadhu Singh as PW 2, Rajinder Singh, Clerk,

Judicial Record Room, Ludhiana as PW 4, Jagir Singh, Advocate as PW 5 and Mohinder Kaur as PW 6, whereas the defendants examined

Balwinder Kaur as DW 1 and Dalip Singh as DW 2.

6. After appreciating the evidence, the trial Court vide its judgment and decree dated 13.9.1997 decreed all the three suits filed by the plaintiffs for

declaration and permanent injunction setting aside the judgment and decree dated 21.4.1988 as null and void along with mutation No. 614 dated

23.6.1988, sanctioned on the basis thereof.

7. Aggrieved against the judgment and decree of the trial Court, the defendants filed Civil Appeal No. 220 of 1997 in Civil Suit No. 212 of

15.6.1989, Civil Appeal No. 75 of 29.1.1997 in Civil Suit No. 215 of 8.5.1990 and Civil Appeal No. 221 of 29.10.1997 in Civil Suit No. 560 of

27.3.1991. All the three appeals were heard together by the Appellate Court and by its common judgment dated 16.8.2000, allowed all the three

appeals and all the three suits were accordingly dismissed. As a result thereof, the plaintiffs have come up in three second appeals about which

reference has already been made in the opening paragraphs of this judgment. The basic issue involved in this case is ""whether the property in

dispute is ancestral or not?

8. In order to prove the nature of the property in dispute, the plaintiff has examined Harmesh Chander, Retired Kanungo as PW 1, who has

prepared the excerpt (Ex. P1). The Appellate Court has observed that in the cross-examination of PW 1, it had transpired that vide mutation No.

366, property of Mula Singh was transferred in favour of Dalip Singh. Vide Mutation No. 279 at Sr. No. 19, Dalip Singh purchased the property

from Mangal Singh measuring 0 bigha 6 biswa 6 biswani. Vide Mutation No. 181 at Sr. No. 23 Dalip Singh and Harcharan Singh purchased the

property from Mangal Singh S/o. Bhagwan Singh measuring 5 bigha 6 biswa 13 biswani. Vide mutation No. 136 at Sr. No. 40 Gurdit Singh

received the property from Prerho wd/o. Jawahar Singh. Vide Mutation No. 202 at Sr. No. 24, Dalip Singh and Harcharan Singh and Anokh

Singh received the property from Hardit Singh S/o. Rai Singh, who was their uncle. Gurmail Singh has admitted in his cross-examination that his

father has received the property from Narain Singh. He further admitted that inheritance of Hardit Singh also came to his father Dalip Singh and the

inheritance of Mit Singh to the extent of 3.33 bighas also devolved upon his father, who had purchased property from Mangal Singh. The

Appellate Court has further observed that the learned trial Court has erred in relying upon the admission contained in the plaint Ex. PW 5/A of the

Civil Suit No. 82 decided on 21.4.1988 and its written statement Mark C-1 that the property in dispute is joint and coparcenary property of the

parties but the said written statement Mark C-1 has not been legally proved on record as it has not been legally exhibited.

9. Learned counsel for the appellant has argued that although, the plaintiff has proved the ancestral nature of the property by way of excerpts by

examining PW 1, but at the same time, from the various jamabandis, it can be concluded that property in dispute in the hands of Dalip Singh was

ancestral property.

10. On the other hand, learned counsel for the respondents has submitted that the plaintiff has only produced excerpts (Ex. P1) and has tried to

prove it by examining PW 1, who has specifically stated in his cross-examination that "I have not brought the original record from which I have

prepared this excerpt nor this record is in my possession. I cannot say anything about the property being ancestral or non-ancestral". In support of

his contention, he has relied upon the judgment of this Court in RSA No. 2602 of 2008 titled as "Hawa Singh v. Daya Nand and others" decided

on 3.2.2016, in which it has been held that the revenue excerpt has to be formally proved in terms of Punjab High Court Rules and Orders Volume

I, Chapter 5, Rules (V) & (VI). He has also relied upon another judgment of this Court in the case of Banta Singh and others Vs. Phuman Singh

and another

11. I have heard learned counsel for the parties and examined the record with their able assistance.

12. The plaintiff Gurmail Singh is son of Dalip Singh, who has suffered decree dated 21.4.1988 in favour of his other son namely, Nirmal Singh,

which has been challenged by Gurmail Singh in Civil Suit No. 212 of 15.6.1989 on the ground that the property in dispute was

ancestral/coparcenary/Joint Hindu Family property. The other suit filed by Mohinder Kaur is also in the same line. Thus, the basic issue involved in

this case is "Whether the suit property is ancestral in the hands of Dalip Singh?

13. The plaintiff has filed suit alleging the property to be ancestral/coparcenary/Joint Hindu Family property. In order to prove that the property is

ancestral, the evidence has to be led to the effect that it is inherited from father, father's father and father's father's father, whereas a Joint Hindu

Family comprises of all the persons lineally descendants from a common ancestor and includes their wives and unmarried daughters. The daughters

ceased to be members of the family as soon as they get married and become members of their husbands family whereas a Hindu coparcenary is a

narrow body then the joint family as it includes those persons, who acquire an interest in the joint or coparcenary property by birth. Till the Hindu

Succession (Amendment) Act, 2005 came into force, the son was included as coparcener but after 9.9.2005, the daughter of a coparcener has

also been included as coparcener. The property inherited from father, father's father and father's father is ancestral, whereas property inherited by

other relations is a separate property. If a person inherits property from his brother then it is his separate property and is absolutely at his disposal

and his son would not get any interest by birth but a separate or self acquired property goes to the descendants or to the male issue of the owner, it

becomes ancestral in the hands of the male issue, who inherits the same. The ancestral property is a species of the coparcenary property.

14. In the present case, the appellate Court has discussed excerpts (Ex. P1) and has found that the property in dispute has not devolved upon

Dalip Singh from his father, rather he acquired the same from other source and was his separate property.

15. In any case, the burden was upon the plaintiff to prove the nature of the property in dispute, but he has failed to prove by producing cogent

evidence and the excerpts (Ex. P1) relied upon by the plaintiff is inconsequential because the person, who had prepared the excerpt, while

appearing as PW 1 has categorically stated in his cross-examination that he has not brought the original record from which he has prepared this

excerpt nor this record is with him and he was unable to say anything about the property being ancestral or non-ancestral. In this regard, decision

in the case of Banta Singh (Supra) would be applicable in which this Court has held as under:--

The revenue excerpt is no part of the record of rights and does not carry any presumption of correctness. It has to be formally proved by the

examination in the witness box of the person who has prepared it on the basis of the entries in the various settlement records and jamabandis. It is

an extract or synopsis of entries collected from diverse places and its value depends on how truly it has reproduced the original entries. If there is

any doubt about a particular entry in the excerpt, it will always be open to the Courts to have it removed by reference to the original records on the

basis of which the excerpt was prepared.

It is also proved in Rule (vi) and (vii) of Chapter 9 of High Court Rules and Order, Volume-I as to how excerpt has to be proved. Rule (v) and (vi)

aforesaid are reproduced below:--

(v) Excerpt should be a true copy and should be proved. Court must remember that unless proved the excerpt of the Special Kanungo or Patwari

Muharrir is not evidence and must not be treated as such. The Special Kanungo or Patwari Muharrir must, when he goes to Court always bring

with him the original records from which his excerpt has been compiled, so that he may be available for comparison. He must always be put on

oath, and be asked to say whether the excerpt is a true copy of a portion of the original records. The excerpts must be a correct copy of such

portions of the records as are relevant and or merely a summary or paraphrase.

(vi) Comparison with original. The Court should, as a rule, compare, with the original records some of the entries in the abstract and initial and date

those thus compared.

The aforesaid rules provide that unless excerpts prepared by Kanungo or Patwari Moharrir is proved, it is not an evidence and must not be treated

as such. The Special Kanungo or Patwari Muharrir must bring the original record when they go to the Court for their examination so that it may be

available for comparison. He must always be put on oath, and be asked to say whether the excerpt is a true copy of a portion of the original

records and as a rule, the Court should compare with the original record some of the entries in the abstract and initial and put a date on the entry

so compared. In the present case, however, no such presumption can be attached. Therefore, it cannot be said that the plaintiff as been successful

in proving the nature of the land to be ancestral so as to maintain his suit.

In view of the aforesaid discussion, the judgment and decree of the Appellate Court in all the three cases are found to be without any blemish and

accordingly, these appeals, which are found to be without any merit, are hereby dismissed.