

Santokh Singh Vs Gurmit Singh

RSA No. 3699 of 2006 (O&M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 3, 2016

Acts Referred:

Hindu Succession Act, 1956 - Section 6

Citation: (2016) 4 LawHerald 3307 : (2017) 1 RCRCivil 744

Hon'ble Judges: Surinder Gupta, J.

Bench: Single Bench

Advocate: Sanjay Majithia, Senior Advocate with Inderjeet Singh, Advocate, for the Respondents; Munish Gupta, Advocate, for the Appellant

Final Decision: Disposed Off

Judgement

Surinder Gupta, J. - Both the appeals captioned above have been taken up together as the matter in issue in both the appeals is similar.

2. Santokh Singh son of Ujjagar Singh filed suit seeking declaration that suit land in both the suits situated in village Adamwal, tehsil and District

Hoshiarpur is joint Hindu family coparcenary property of plaintiff and defendants no. 1 to 7 of which his father Ujjagar Singh (since deceased) was

karta and sale deed dated 15.11.1994 with respect to 7 kanals of land executed by Ujjagar Singh in favour of defendant no. 12-Sukhjiti Kaur,

daughter of Ujjagar Singh is illegal, null, void, without consideration and without any legal and valid necessity.

3. The land measuring 110 kanals 18 marlas being $\frac{1}{2}$ th share of land measuring 443 kanals 12 marlas was subject matter of Civil Suit No. 366 of

1995/2000 and 631/2524 share in 31 kanals 11 marlas; $\frac{1}{2}$ th share in land measuring 97 kanals 2 marlas; 56 kanals 17 marlas, 39 kanals 18

marlas, 197 kanals 11 marlas; 2943/11772 share in land measuring 3 kanals 11 marlas and a house situated in village Adamwal were the subject

matter of Civil Suit No. 566 dated 08.10.1998.

4. Two issues crop up for consideration in the suits filed by plaintiff, which were disposed of by common judgment dated 08.11.2002 by Civil

Judge (Junior Division), Hoshiarpur. Firstly that suit land is joint Hindu family coparcenary property and secondly, the suit land as fully described in

headnote of the plaint was allotted to Inder Singh in lieu of his land left in Pakistan. Both the points were decided against the appellant.

5. First contention of learned counsel for the appellant is that suit land is joint Hindu family coparcenary property. He has argued that this land was

allotted to Inder Singh in lieu of the land left by him in Pakistan. For this purpose, he has referred to affidavits (Ex. P-1 and Ex. P-2) wherein

Ujjagar Singh and Avtar Singh sons of Inder Singh stated before Rehabilitation Authorities that Inder Singh was having 50 acres of land in Chak

No. 5, P.O. Mandi Chishtian, District Bahawalpur, Pakistan in lieu of which they have been allotted 28-3/4 standard acre.

6. Learned counsel for the appellant has fairly conceded few facts, which are enumerated as follows:-

(i) The total suit land as described in Civil Suit No. 366 of 1995/2000 is 443 kanals 12 marlas out of which plaintiff-appellant has described share

of Ujjagar Singh, his father, as 110 kanals 18 marlas.

(ii) The land described in Civil Suit No. 566 of 08.10.1998 is 440 kanals 1 marla plus a house.

(iii) As per allotment letter (Ex. P-4) in the name of Inder Singh, the total land allotted to him is 216 kanals 19 marlas.

7. Plaintiff could not make out that after consolidation khasra number of suit land mentioned in both the cases were allotted in lieu of the land of

Inder Singh. Though, some of the khasra numbers could tally but entire land is not proved to have been allotted in lieu of the land allotted to Inder

Singh. It is not required to go into the this controversy regarding allotment of land after consolidation as plaintiff/appellant failed to prove on file that

entire suit land is joint Hindu family coparcenary property in the hands of Ujjagar Singh son of Inder Singh.

8. The plea raised by learned counsel for the appellant and his reference to evidence recorded in both the cases, if accepted, is sufficient to support

the conclusion drawn by Courts below that suit property is not proved to be joint Hindu family coparcenary property. Plaintiff is in third generation

from Inder Singh. In order to prove that suit land was joint Hindu family coparcenary property inherited by four sons of Inder Singh, he was

required to prove by leading cogent and convincing evidence that entire suit land was allotted in consolidation proceedings in lieu of land which

Inder Singh got in lieu of his land in Pakistan. It is no more res integra that if part of suit land is joint Hindu family coparcenary property and merged

with self acquired property of parties to the extent that it cannot be separated, whole land is to be treated as self acquired property in the hands of

recorded owners. Reference in this regard can be made to observations of Apex Court in case of Mara and others v. Mst. Nikko @ Punjab

Kaur and another, 1964 AIR (SC) 1821, wherein it was observed in para 7 of the judgment as follows:-

7. Now, it has been ruled in the Punjab consistently that where lands are so mixed up that the ancestral and non-ancestral portions cannot be

separated they must be regarded as non-ancestral, unless it is shown which are ancestral and which are not. This was laid down by the Privy

Council in *Avtar Singh v. Thakar Singh*, 35 Ind App. 206 (PC). It was held by Mr. Justice Kapur (as he then was) in *Inder Singh v. Gulzara*

Singh and others, AIR 1951 Punjab 345 basing himself upon *Saif-ul-Rahman v. Mohammand Ali Khan*, ILR 9 Lahore 95 and *Jagtar*

Singh v. Raghbir Singh, ILR 13 Lahore 165 that land ceases to be ancestral if it comes into the hands of an owner otherwise than by descent.

Once these conclusions are reached, it is quite obvious that the decision of the District Judge not to apply the answer to question No. 52 to non-

ancestral land was right. It may be mentioned that the answers to questions refer to ancestral property only and this is now firmly established. In

fact, it was not denied at the hearing.

9. When Inder Singh has been allotted only 216 kanals 19 marlas of land as per allotment letter (Ex. P-4), the entire land owned by him, which is

subject matter of suit, could not be treated as ancestral land. Ancestral and non-ancestral land when got mixed up and cannot be separated, will be

treated as self acquired land of Ujjagar Singh and his brothers.

10. Learned counsel for the appellant fairly conceded during course of arguments that he is not in a position to make out that entire suit land was

allotted in lieu of land allotted to Inder Singh vide letter (Ex. P-4) or to separately identify khasra numbers which were allotted in lieu of land

allotted to Inder Singh before consolidation. In the absence of pleadings to above effect or evidence on record, learned counsel for the appellant

could not make out that observation of Courts below that suit property is not proved to be joint Hindu family coparcenary property, is perverse

against law, fact and evidence on record.

11. In view of my above discussion, appeals filed by plaintiff have no merits. No substantial question of law requiring determination arises in these

appeal.