

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 7994 OF 2002

PRITPAL SINGH AND OTHERS

Appellants

VERSUS

NIRMAL SINGH

Respondent

J U D G M E N T

This is an appeal for setting aside order dated 5.12.2001 of the learned Single Judge of the Punjab and Haryana High Court whereby he summarily dismissed the second appeal filed by the appellants against the judgment and decree passed by the lower appellate Court, which declined to interfere with the decree passed by the trial Court in a suit for joint possession filed by the respondent.

Shri Phaman Singh (predecessor of the parties) owned agricultural lands in village Gunika, Tehsil Nabha, District Patiala. He had one son Shri Maghar Singh and one daughter Smt. Amar Kaur.

After the death of Phaman Singh, his property was inherited by Shri Maghar Singh and Smt. Amar Kaur.

Shri Maghar

Singh had married twice.

From the first marriage, he was

blessed with one son, namely, Shri Bachan Singh. From the second marriage also he was blessed with one son, namely, Shri

Bikar Singh. Shri Bachan Singh married Smt. Tej Kaur and was

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blessed with two sons - Shri Nirmal Singh (respondent) and Shri

Gurcharan Singh.

Shri Bikar Singh had two sons - Shri Pritpal

Singh (appellant No. 1) and Shri Gurpreet Singh (appellant No.2).

The respondent filed Suit No. 492 of 1996 for a

decree of joint possession to the extent of 1/3rd share in the lands in khewat No.111, khatauni No. 288, khasra Nos. 31//13(8-

0), 14(8-0), 17(7-16), 18(8-0), 22(1-8), 23(8-0), 24(7-19),

39//3/2(7-17), 4/1(3-11), 97/6(0-15), 155(0-3), khewat No. 113, khatauni No. 290, khasra Nos. 12//17(2-5), 22(8-4), 23(10-0), 24(6-8), 13//3(8-0), 4(8-0), 7(5-15), 8(8-0), 13(8-0), 14(3-16). He averred that the suit property is an ancestral, coparcenary Joint Hindu Family property; that Pritpal Singh and Gurpreet Singh (appellant Nos. 1 and 2 herein) had illegally obtained compromise decree dated 28.2.1980 in respect of a portion of the suit property and the same was not binding on him and that cause of action arose when the defendants (appellants herein) refused to recognize his right of joint possession.

In their written statement, the appellants pleaded that the suit property is not ancestral Joint Hindu Family Property; that judgment and decree dated 28.2.1980 are legal and are binding on the plaintiff (respondent herein); that the plaintiff does not have the locus standi to file the suit and

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that the suit is barred by the principles of res judicata.

On the pleadings of the parties, the trial Court framed seven issues of which the relevant issues are extracted below:

1. Whether the suit property is ancestral and coparcenary property of the parties to the suit? OPP.

2. Whether the decree and Judgment dated 28.2.80 is illegal, null and void? OPP.

3. Whether the plaintiff is entitled to joint possession of the suit land? OPP.

The respondent examined himself as PW-2 and two other witnesses, namely, Kirpal Singh as PW-1 and Norang Singh as PW-

3. He also produced documents, which were marked as Exts.P1 to

P8. On behalf of the defendants, Mohinder Singh was examined as DW-1 in his capacity as their attorney and also produced documents marked Exts. D-1 to D-7.

After analysing the pleadings and evidence of the parties, the trial Court held as under:

- 1.the suit is barred by res judicata insofar as the property in khewat No. 113 is concerned because the same was subject matter of the previous suit.
- 2.that the suit property comprised in khewat No.

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111 is ancestral property of the parties and the plaintiff is entitled to decree of joint possession.

The lower appellate Court dismissed the appeal preferred by the appellants by recording the following observations:

"A reference to Ex. P1 copy of the Jamabandi for the year 1959-60 shows that the land was owned by Phaman Singh. Ex.P3 is certified copy of the mutation whereby the land in question was mutated in the name of Maghar Singh and Amar Kaur. Ex.D8 is the copy of mutation whereby transfer of her share by Amar Kaur in favour of Maghar Singh by way of Hibanama has been recorded. However, in all these documents khasra numbers of the property held by Amar Kaur and transferred by her to Maghar Singh have not been indicated. Admittedly, property between Maghar Singh and Amar Kaur was never partitioned by metes and bounds. Also, there is no evidence available on record that Maghar Singh ever treated the land transferred in his favour by Amar Kaur as his own self acquired property. To the contrary, in the pleadings which gave rise to Judgment and Decree dated February 28, 1990 (Ex. D3 and D4) the stand of the appellants themselves was that property in the hands of Maghar Singh was coparcenary joint Hindu Family property wherein all of them have pre-existing right.

Relationship of the parties to the common ancestor Phaman Singh and his son Maghar Singh has not been disputed. This brings to the conclusion that the respondent being coparceners acquired a right in the coparcenary joint Hindu family property of Maghar Singh, the common ancestor of the

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parties and the same continued to be ancestral property"

The learned Single Judge of the High Court dismissed the second appeal on the premise that as per the admitted case

of the parties, the property was never partitioned between Maghar Singh and Amar Kaur.

Shri Sarvesh Bisaria, learned counsel for the appellants referred to the judgment and decree passed in Suit No.460/1989 titled Tej Kaur v. Maghar Singh and others and Civil Appeal No. 217 of 1991 Tej Kaur and others v. Maghar Singh and others and argued that once challenge to decree dated 28.2.1980 passed in Civil Suit No. 54 of 1980 was concurrently negatived by two courts, the same could not have been challenged in the subsequent suit filed by the respondent for joint possession to the extent of 1/3rd share in the suit land. Shri Bisaria pointed out that Nirmal Singh who was minor at the time of filing of Suit No. 460 of 1980 was duly represented through his next friend and guardian-cum-mother Smt. Tej Kaur and at the time of filing of appeal he was major and argued that the decrees passed by the two courts were binding on him and the trial Court, the lower appellate Court and the High Court committed jurisdictional error by entertaining the subsequent suit filed by the respondent for joint possession to the extent of 1/3rd share in the suit land. Learned counsel

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submitted that the decrees passed by the trial Court and the lower appellate Court in the third round of litigation would operate as res judicata and the trial Court committed serious error by entertaining and deciding Suit No. 492 of 1996 and the same error was repeated by the lower appellate Court and the High Court.

In our opinion, there is no merit in the arguments/submissions of the learned counsel. It is true that the suit and appeal filed by Smt. Tej Kaur and two others questioning decree dated 28.2.1980 passed in favour of the appellants were dismissed by the trial Court and the lower appellate Court but those judgments had no bearing on the suit filed by Nirmal Singh for joint possession on the property

except khewat No. 113 which was subject matter of Suit No. 54 of 1980. The trial Court took cognizance of this and observed as under:

"the only difference between the present suit and previous is that Bikar Singh was not a party in the earlier suit and the suit property in Khewat No. 111 was not part of the said suit. As far as the rest of the property is concerned and relief is concerned, there remains no doubt that the property shown in Khewat No. 113 was very much matter of subject in the previous suit. Though Bikar Singh has been made a party in the present suit but there is no substantial relief claimed against said Bikar Singh. I am of the considered opinion that as far as question of challenging the decree dated 28.2.1980 qua suit property shown in Khewat No. 113 is concerned, the present

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suit is barred for such relief. However since property bearing Khewat No. 111 was never subject of litigation between the parties. So finding of that cases are not in relation to the property to shown in Khewat No. 111 and plaintiff definitely has got a right to file suit in claim his share if any for the property of Khewat No. 111. So this issue is partly recorded in favour of the defendant and qua the suit property mentioned in Khewat No. 111 in favour of the plaintiff.

It would be worth noting that whatever the discussion will be under the issues in the subsequent portion of the judgement could be qua sit property of Khewat No. 111 only."

The lower appellate Court agreed with the trial Court and held that the earlier suit was in respect of khewat No. 113 only and khewat No. 111 which continued to be a coparcenary property and Joint Hindu Family property of Maghar Singh and Amar Kaur and in the absence of partition, the plaintiff was entitled to claim joint possession in respect of the land in khewat No. 111.

The appellants have failed to show any perversity in the finding recorded by the two courts. Therefore, notwithstanding, the fact that the impugned order is rather cryptic, we do not find any valid ground or justification to set aside the decree passed in favour of respondent.

In the result, the appeal is dismissed.

(G.S. SINGHVI)

.....J.
(ASOK KUMAR GANGULY)NEW DELHI,
JANUARY 20, 2011.

ITEM NO.105

COURT NO.11

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7994 OF 2002

PRITPAL SINGH & ORS.

Appellant (s)

VERSUS

NIRMAL SINGH

Respondent(s)

(With office report)

Date: 20/01/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s) Mr. Sarvesh Bisaria, Adv.

For Respondent(s) Mr. Ashok Kr. Panda, Adv.
Mr. Ajit Kumar, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the
signed judgment.(A.D. Sharma)
Court Master(Phoolan Wati Arora)
Court Master

(Signed judgment is placed on the file)