2025:PHHC:114790

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on 26th of May, 2025
Pronounced on 25th of August, 2025

RSA No.1780 of 2000 (O&M)

Dilbag Singh and another .....Appellants

Versus

Maghar Singh and others .....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. G.S. Sandhu, Advocate
for the appellants.

Mr. M.L. Saggar, Senior Advocate with
Mr. Omesh Garg, Advocate
for respondents No.2 to 5.

PANKAJ JAIN, J.

Plaintiffs are in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position before the Court of the First Instance, i.e. the appellants as plaintiffs and respondents as defendants.

3. Plaintiffs filed suit for possession of land measuring 8 Kanals 0 Marla. The challenge is to the Sale Deed dated 29.05.1986 in favour of defendants No.1 to 4 and Mortgage Deed dated 02.05.1985 in favour of defendant No.5 executed by No.6.

4. As per the plaintiffs, they being co-parceners have right in the

property by birth as the property is a co-parcenary ancestral property. Defendant No.6, their father sold the same without any legal necessity and without consideration.

5. Suit was contested by the defendants. Defendants No.1 to 4 filed joint written statement denying the status of the plaintiffs as co-parceners or co-owners in the property in dispute. It was pleaded in the written statement that as per Mortgage Deed dated 02.05.1985 *qua* land measuring 7 Kanals 8 Marlas stands mortgaged with possession by Baland Singh, defendant No.6 in favour of defendant No.5 for a valuable consideration of Rs.30,000/- and for legal necessity to pay mortgage debt *qua* earlier Mortgage Deed dated 05.08.1983 to one Jai Kumar. In order to pay the entire mortgage debt, Sale Deed dated 29.05.1986 was executed in their favour by defendant No.6. Sale Deed was also executed to meet household expenses, repair of house etc. Thus sale deed was executed as family was in due need of money

5.1. Defendant No.5 though filed separate written statement but pleaded on the lines of the written statement filed by defendants No.1 to 4 and also added that defendant No.6 apart from mortgaging the property, in question, also mortgaged land measuring 9 Kanals 6 Marlas for an amount of Rs.12,000/- in favour of one Kuldip Singh vide Mortgage Deed dated 31.08.1981.

5.2. Defendant No.6 admitted the claim of the plaintiffs.

6. On the basis of the pleadings, Court of the First instance framed

the following issues:

> "1. Whether the plaintiffs constitutes joint hindu family with the defendant no.6? OPP.
> 2. Whether the suit land is coparcener and ancestral property? OPP.
> 3. If issue No.1 & 2 are proved whether allegations made by defendant no.6 vide sale deed dated 29/5/1986 and mortgage deed dated 2/5/1985 in favour of defendant no.1 to 5 is legal necessity? OPD 1 to 5
> 4. Whether the plaintiffs are governed by customory law? OPD.
> 5 Whether the plaintiffs are entitled to decree for possession and injunction prayed for by them? OPP.
> 6. Relief."

7. While deciding Issue No.1, the Court of the First Instance found that it stands proved from the pedigree table that Mukhtiar Singh, great grandfather of the plaintiffs, was the original owner. From him the property was inherited by Bant Singh, grandfather of the plaintiffs and from Bant Singh, property travelled to defendant No.6, father of plaintiffs. Court of the First Instance thus held that the plaintiffs constituted joint Hindu family with defendant No.6 and are co-parceners. Property in the hands of defendant No.6 being a co-parcenery property, plaintiffs have a birth right in the same.

7.1. Trial Court while deciding Issue No.3 found that the family had no necessity to sell the land when Sale Deed (Exhibit D3), was executed in favour of defendants No.1 to 4. Court of the First Instance found that on 29.05.1986 when the Sale Deed, Exhibit D-3, was executed by defendant

No.6 in favour of defendants No.1 to 5, on the same date, defendant No.5 borrowed a sum of Rs.16,000/- from Jasbir Kaur wife of defendant No.6 and mother and attorney of plaintiffs against promisory note. The said fact stood proved by way of judgment, Exhibit P-22. Resultantly, the Court of the First Instance decreed the suit filed by the plaintiffs.

8. In appeal preferred by defendants, the findings recorded by the Trial Court on Issue No.1 stand reversed. The Lower Appellate Court found that the Court of the First Instance erred in holding that the property in dispute was co-parcernary property owned by plaintiffs and defendant No.6.

Lower Appellate Court found that from Mukhtiar Singh, the property devolved upon Bant Singh, the grandfather of the plaintiffs not by way of survivorship but by way of registered Will dated 29.12.1997. On death of Mukhtiar Singh, property came in the hands of Baland Singh, defendant No.6 father of the plaintiffs. Lower Appellate Court while relying upon ratio of law laid down by Supreme Court in the case of **'Commissioner of Wealth Tax, Kanpur etc. vs. Chander Sen etc.' AIR 1986 SCC 1753** found that where the property comes to the hands of father by succession and not by survivorship, it loses its character of being a co-parcenary property. Lower Appellate Court thus held that the plaintiffs having no right in the self acquired property of defendant No.6, they do not have *locus* to maintain the present suit.

9. Ld. Counsel appearing for the appellants has assailed the findings recorded by Lower Appellate Court on Issue No.1. He submits that

even though the property travelled in the hands of Bant Singh by way of registered Will dated 29.12.1997 executed by Mukhtiar Singh but defendant No.6 Baland Singh got property from his father Bant Singh after he died intestate. Thus, property in hands of Baland Singh is ancestral property and the plaintiffs have right in the same.

10. Per contra, Mr. Saggar, Sr. Counsel appearing for the respondents has relied upon ratio of law laid down by Supreme Court in ***Chander Sen's*** case (supra) and ratio of law laid down by this Court in the case of **Major Singh vs. Angrez Singh and others, 2024(3) PLR 386,** wherein this Court followed the dictum of law laid down in *Chander Sen*'s case *ibid*.

11. The facts being not much in dispute, the only issue that arises for consideration of this Court is :

> "*Whether the property in the hands of Baland Singh can be held to be ancestral property qua the plaintiffs or is his self-acquired property as the survivorship came to an end after Mukhtiar Singh executed Will in favour of Bant Singh?"*

12. The law stands settled by Supreme Court in ***Chander Sen***'s case (supra) which was reiterated by Supreme Court in the case of **Uttam vs. Saubhag Singh and others (2016) 4 SCC 68** holding as under:

> "20. Some other judgments were cited before us for the

proposition that joint family property continues as such even with a sole surviving coparcener, and if a son is born to such coparcener thereafter, the joint family property continues as such, there being no hiatus merely by virtue of the fact there is a sole surviving coparcener. ***Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe (1988) 2 SCC 126, Sheela Devi v. Lal Chand, (2006) 8 SCC 581*****,** and ***Rohit Chauhan v. Surinder Singh (2013) 9 SCC 419***, were cited for this purpose. None of these judgments would take the appellant any further in view of the fact that in none of them is there any consideration of the effect of Sections 4, 8 and 19 of the Hindu Succession Act. The law, therefore, insofar as it applies to joint family property governed by the Mitakshara School, prior to the amendment of 2005, could therefore be summarized as follows:-

(i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).

(ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.

(iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male

> coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.
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> (v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.
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> (vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants.

13. The same view finds echo in the case of **'Govindbhai Chhotabhai Patel vs. Patel Ramanbhai Mathurbhai', (2020) 16 SCC 255** wherein Supreme Court observed as under:

> **"11.** This Court in three Judge Bench in *C.N. Arunachala Mudaliar [C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar, (1953) 2 SCC 362 : 1954 SCR 243: AIR 1953 SC 495]* considered the question as to whether the properties acquired by defendant No. 1 under Will are to be regarded as ancestral or selfacquired property in his hands. It is a case where the plaintiff claimed partition of the property in a suit filed against his father and brother. The stand of the father was that the house property was the self-acquired properties of his father and he got them under a Will executed in the year 1912. It was held that father of a Joint Hindu family governed by Mitakshara law has full and uncontrolled powers of disposition over his self-acquired

immovable property and his male issue could not interfere with these rights in any way. The Court while examining the question as to what kind of interest a son would take in the self-acquired property of his father which he receives by gift or testamentary bequest from him, it was held that Mitakshara father has absolute right of disposition over his self-acquired property to which no exception can be taken by his male descendants. It was held that it was not possible to hold that such property bequeathed or gifted to a son must necessarily rank as ancestral property. It was further held that a property gifted by a father to his son could not become ancestral property in the hands of the donee simply by reason of the fact that the donee got it from his father or ancestor.

12. The Court found that such questions have been answered in different ways by different High Courts. The Calcutta High Court held [*Muddun Gopal Thakoor v. Ram Buksh Pandey, (1863) 6 WR 71*] that properties become ancestral property in the hands of his son as if he had inherited it from his father but in other High Courts, the question is treated as one of construction to be decided in each case with reference to its facts as to whether the gifted property was intended to pass to the sons as ancestral or self-acquired property.

13. The Bombay High Court in *Jugmohan Das v. Sir Mangal Das (1886) I.L.R. 10 Bom 528* held that if the son takes by devise, the property continues to be self-acquired in his hands. A man can give away his self-acquired property to whomsoever it pleases, including his own sons and that property so given would be considered self-acquired in the hands of the donee. The Court held as under:

> "I now come to the question, whether a son, to whom a father leaves his self-acquired property by will, takes the estate by devise or by descent. This is a most important point, perhaps the most important point in the case. For, if the son takes by devise, the property would, in my opinion, continue to be self-acquired in his hands, and a ready means

> would be afforded by the use of the testamentary power of checking enforced partitions..
> xx xx xx

The principle is now settled beyond question, that under Hindu law a man may alienate his property to the same extent by a will as he might by a gift inter vivos. In the *Tagore Case [Juttendromohun Tagore v. Ganendromohun Tagore, 1872 SCC OnLine PC 36: (1872-73) Supp IA 47]* IA at p. 68 their Lordships of the Privy Council say: (SCC OnLine PC)

> "A gift by will is, until revocation, a continuous act of gift up to the moment of death, and does then operate to give the property disposed of to the persons designated as beneficiaries. They take, upon the death of the testator, as if he had given the property in his life-time."

A bequest by will, therefore, is a gift made in contemplation of death. It only differs from a gift in the fact that it takes effect at a future time instead of immediately. But it must clearly be governed and controlled by the general rules regarding gift. Now, there is no doubt that a man can give away self-acquired property to whomsoever he pleases, including his own sons; and there is no doubt that property so given would be considered self-acquired in the hands of the donee. It would, therefore, follow that property given by will would equally be self-acquired in the hands of the devisee."

14. Such view of the Bombay High Court was accepted by the Allahabad High Court *Parsotam v. Janki Bai,* ILR 29 All 354 and the Lahore High Court *Amarnath v. Guran,* AIR 1918 Lahore 394. This Court in *C.N. Arunachala Mudaliar [C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar,* (1953) 2 SCC 362: 1954 SCR 243: AIR 1953 SC 495*]* approved the view [*Jugmohan Das v. Mangal Das*, ILR (1886) 10 Bom 528] of the Bombay High Court and held as under:

> "*9.* .. It was held, therefore, that the father of a joint Hindu family governed by Mitakshara law has full and

uncontrolled powers of disposition over his self-acquired immovable property and his male issue could not interfere with these rights in any way. This statement of the law has never been challenged since then and it has been held by the various High Courts in India, and in our opinion rightly, that a Mitakshara father is not only competent to sell his selfacquired immovable property to a stranger without the concurrence of his sons [Vide Muddun v. Ram, 6 WR 71] but he can make a gift of such property to one of his own sons to the detriment of another [Vide Sital v. Madho, ILR 1 All 394]; and he can make even an unequal distribution amongst his heirs [Vide Bawa v. Rajah, 10 WR 287].

10. So far the law seems to be fairly settled and there is no room for controversy. The controversy arises, however, on the question as to what kind of interest a son would take in the self-acquired property of his father which he receives by way of gift or testamentary bequest from him, vis-a-vis his own male issue. Does it remain self-acquired property in his hands also, untrammeled by the rights of his sons and grandsons or does it become ancestral property in his hands, though not obtained by descent, in which his male issue become coowners with him?....…

11. In view of the settled law that a Mitakshara father has right of disposition over his selfacquired property to which no exception can be taken by his male descendants, it is in our opinion not possible to hold that such property bequeathed or gifted to a son must necessarily, and under all circumstances, rank as ancestral property in the hands of the donee in which his sons would acquire co-ordinate interest.."

15. Still further, it was held that the father's gifts are exempt from partition. The reason for this distinction is that the theory of equal ownership between the father and the son in the ancestral property is not applicable to the father's gifts at all. The Court held

as under: (*C.N. Arunachala Mudaliar [C.N. Arunachala Mudaliar v. C.A. Murugantha Mudaliar*, (1953) 2 SCC 362 : 1954 SCR 243 : AIR 1953 SC 495], AIR pp. 499-500, paras 12-13]

> "12. .But when the father obtains the grandfather's property by way of gift, he receives it not because he is a son or has any legal right to such property but because his father chose to bestow a favour on him which he could have bestowed on any other person as well. The interest which he takes in such property must depend upon the will of the grantor. A good deal of confusion, we think, has arisen by not keeping this distinction in mind. To find out whether a property is or is not ancestral in the hands of a particular person, not merely the relationship between the original and the present holder but the mode of transmission also must be looked to; and the property can ordinarily be reckoned as ancestral only if the present holder has got it by virtue of his being a son or descendant of the original owner. The Mitakshara, we think, is fairly clear on this point. It has placed the father's gifts under a separate category altogether and in more places than one has declared them exempt from partition. Thus in Chapter I, Section 1, Placitum 19 Mitakshara refers to a text of Narada which says:

"Excepting what is gained by valour, the wealth of a wife and what is acquired by science which are three sorts of property exempt from partition; and any *favour conferred* by a father."

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> 15. Another argument is stressed in this connection, which seems to have found favour with the learned Judges of the Patna High Court who decided the Full Bench case [Vide Bhagwat v. Mst. Kaporni, ILR 23 Pat 599] referred to above. It is said that the exception in regard to father's gift as laid down in placitum 28 has reference only to partition between the donee and his brothers but so far as the male

> issue of the donee is concerned, it still remains partible. This argument, in our opinion, is not sound. If the provision relating to self-acquisition is applicable to all partitions, whether between collaterals or between the father and his sons, there is no conceivable reason why placitum 28, which occurs in the same chapter and deals with the identical topic, should not be made applicable to all cases of partition and should be confined to collaterals alone. The reason for making this distinction is undoubtedly the theory of equal ownership between the father and the son in the ancestral property which we have discussed already and which in our opinion is not applicable to the father's gifts at all. Our conclusion, therefore, is that a property gifted by a father to his son could not become ancestral property in the hands of the donee simply by reason of the fact that the donee got it from his father or ancestor."
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> (emphasis in original)

16. This Court further held in *C.N. Arunachala Mudaliar case* [*C.N. Arunachala Mudaliar [C.N. Arunachala Mudaliar v. C.A. Murugantha Mudaliar,* (1953) 2 SCC 362 : 1954 SCR 243 : AIR 1953 SC 495] that on reading of the Will as a whole, the conclusion becomes clear that the testator intended the legatees to take the properties in absolute rights as their own selfacquired property without being fettered in any way by the rights of their sons and grandsons. In other words, he did not intend that the property should be taken by the sons as ancestral property. Consequently, the appeal was allowed and the suit for partition by the son against his father was dismissed.

17. In other case reported as [*Pulavarthi Venkata Subba Rao & Ors. v. Valluri Jagannadha Rao (deceased) by his Heirs & LRs & Ors.* AIR 1967 Supreme Court 591], life estate was given by Valluri Jagannadha Rao to his two sons, Srivatsankara Rao and Narasimha Rao. There was a condition that if any of his sons left no son, the sons of his other son would be entitled to the properties at the end of the life estate. The High Court held that the properties

taken by two sons of Narasimha Rao under Will were their separate properties and not ancestral properties as there was no such intention in the Will. This Court held as under:

> "8. The contention of the judgment-debtors was that there were two persons who were legatees under the will. They took the villages not as ancestral properties but as self-acquired properties, and the peshkash payable on these two villages must be divided between them before Section 3(ii), proviso (D) of the Act was made applicable. The contention on the side of the decree-holders was that these properties were held by an undivided Hindu family and the sons of Narasimha Rao took the properties under the will as ancestral properties, and the peshkash in respect of the two villages must be added together for the purpose of the application of the said proviso. The High Court held that the properties taken by the two sons of Narasimha Rao under the will, were their separate properties and not ancestral properties, as there were no words to show a contrary intention. The High Court also referred to the conduct of the respondents in partitioning the villages and held that the property was held not jointly but in definite shares. The High Court, therefore, held that the peshkash in respect of the two villages could not be aggregated. The High Court, accordingly, broke up the peshkash in respect of Kalagampudi and the three-fifth share of Pedamamidipalli into two halves and held that as each son of Narasimha Rao was required to pay only his share, the peshkash paid by them individually did not exceed Rs. 500 mentioned in proviso (D), and that the judgmentdebtors were, therefore, agriculturists. This part of the case was not challenged before us by the learned Advocate-General of Andhra Pradesh. Indeed, the decision of the High Court is supported by *C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar [C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar,* (1953) 2 SCC 362 : 1954 SCR 243 : AIR 1953 SC 495], in respect of the character of the property inherited

> by the two sons of Narasimha Rao, and this fundamental fact could not be questioned..."
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> **18.** Learned counsel for the appellants has referred to *Shyam Narayan Prasad [Shyam Narayan Prasad v. Krishna Prasad,* (2018) 7 SCC 646; (2018) 3 SCC (Civ) 702*]*. That is a case in which the property in question was held to be ancestral property by the Trial Court. The plaintiffs therein being sons and grandson of one of the sons of Gopal Prasad, the last male holder was found to have equal share in the property. The question examined was whether the property allotted to one of the sons of Gopal Prasad in partition retains the character of coparcenary property. It was the said finding which was affirmed by this Court. This Court held as under: (SCC p.651, para 12)
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> > "12. It is settled that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship."

14. The property in hands of Bant Singh being his self acquired property, the same lost its character of being ancestral property. It further travelled by operation of law and not survivorship.

15. Thus, finding no merit in present appeal, the same is ordered to be dismissed.

16. Pending application(s), if any, shall also stand disposed off.

August 25, 2025 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No