

PUNJAB AND HARYANA HIGH COURT

Bench: Justice Deepak Gupta

Date of Decision: 31st May 2024

Case Nos.:

REGULAR SECOND APPEAL NO. 982 OF 1992 (O&M)

REGULAR SECOND APPEAL NO. 2243 OF 1992 (O&M)

REGULAR SECOND APPEAL NO. 1073 OF 1992 (O&M)

APPELLANTS:

**Gurdev Singh (since deceased) through LRs and another
Lachhman Singh (since deceased) through LRs and another
Sarwan Singh (since deceased) through LRs and another**

VERSUS**RESPONDENTS:**

Lachhman Singh and others

Gurdev Singh (since deceased) through LRs and others

Legislation:

Order XLI Rule 27 of the Code of Civil Procedure, 1908

Subject: Regular second appeals arising from the decisions on the ancestral and self-acquired nature of the suit properties in the villages of Salala and Pattar Kalan.

Headnotes:

Ancestral vs. Self-Acquired Property – Suit by sons challenging the self-acquired nature of property decreed in favor of grandsons – Trial Court held land in village Salala as self-acquired based on a sale deed and land in village PattarKalan as ancestral – Appeals filed by both parties – First Appellate Court dismissed all appeals without considering application for additional evidence – High Court remanded matter to First Appellate Court for re-evaluation [Paras 1-15].

Additional Evidence – Appellants' application under Order XLI Rule 27 CPC for producing additional evidence not decided by the First Appellate Court – High Court directed First Appellate Court to decide on the application and then re-evaluate the appeals – Emphasized statutory right to lead additional evidence and the necessity for Appellate Courts to consider such applications before final decision [Paras 10-14].

Relief – Judgments and decrees dated 07.02.1992 by the First Appellate Court set aside – Matters remanded back for fresh decision considering the application for additional evidence – Appellate Court directed to expedite decision within nine months [Paras 15-15].

Referred Cases:

**Hakam Singh vs State Of Haryana, AIR 2008 SC 2990
Shaukin Singh vs Bishan Singh, 2012 (7) RCR (Civil) 2773
Mahant Gauri Shanker vs Surjit Kumar, 2011 (30) RCR (Civil) 509
Joginder Pal Monga vs Jasjit Singh, 2020 (2) PLR 265**

Representing Advocates:

For Appellants in RSA No. 982 of 1992 and RSA No. 1073 of 1992 and for Respondents in RSA No. 2243 of 1992: Mr. Ashwani Kumar Chopra, Sr. Advocate with Mr. Brahmjot Singh Nahar, Advocate

For Appellants in RSA No. 2243 of 1992 and for Respondent Nos. 1 to 5 in RSA No. 982 of 1992 and RSA No. 1073 of 1992: Mr. G.S. Nagra and Mr. K.S. Rawat, Advocates

ORDER

DEEPAK GUPTA , J.

As noted from the judgment of the Courts below, Dalip Singh S/o Hakam had four sons, namely, Gurdev, Sarwan, Lachhman and Baldev. Said Dalip Singh had land/share in land in two villages, namely,

Pattar Kalan and Salala in three parcels each, as follows:

Village Salala - A (i) : 39K - 18M

A(ii) :45K – 18M

A(iii) : 32K - 03M

Village Pattar Kalan - B (i) : 6K - 3M

B(ii) : 155K – 4M

B(iii) : 8K – 7M

2.1 Two of the sons, namely Gurdev and Sarwan Singh filed the

suit [*Civil Suit N: 528 of 1985*] impleading their father Dalip Singh, two brothers Lachhman & Baldev besides sons Mashtkin Singh & Santokh Singh of Baldev; and Jit Singh S/o Lachhman as contesting defendant Nos.1 to 6. Other defendant Nos.7 to 23 were impleaded as a party being other co-sharers in the joint land.

2.2 It was contended that suit land of the two villages Salala and Pattar Kalan was ancestral in nature, but Dalip Singh was bent upon to injure the rights of the plaintiffs in the suit land, inasmuch as being inclined towards his grandsons, i.e. sons of Lachhman and Baldev, Dalip Singh had already suffered a decree dated 16.03.1982 in respect of 39 kanals 18 marlas of land situated in village Salala in favour of his said grandsons. Plaintiffs prayed for a decree of declaration that they are joint owner in possession of the suit property, which is ancestral and coparcenary in nature. They also prayed to set aside judgment & decree dated 16.03.1982 suffered by Dalip Singh in favour of Jit Singh, Mashtkin & Santokh Singh, i.e. sons of Lachhman & Baldev. They further prayed for a decree of permanent injunction to restrain the defendants from alienating the suit property or interfere in the joint possession.

2.3 The defendants contested the suit by contending that the suit property was not ancestral in nature; and rather, the same was self-acquired property of Dalip Singh.

2.4 Necessary issues were framed. During evidence, defendants relied upon a sale deed (Ex. D1) pertaining to the land measuring 39 Kanals 18 marlas of village Salala, whereby Dalip Singh had

purchased the said land from one Smt. Parmeshwari way back in 1958. By relying upon the said sale deed, the Trial Court held that Dalip Singh was the owner of the land situated in village Salala and same was his selfacquired property and therefore, he had the right to suffer decree regarding the 39 kanals 18 marlas of land of village Salala in favour of his grandsons by way of decree dated 16.03.1982, which was based upon a family settlement. However, the land of village Pattar Kalan was held to be ancestral land of the parties.

2.5 Suit of the plaintiffs was accordingly partly decreed in respect of the land of village PattarKalan; whereas, the suit pertaining to the land of village Salala was dismissed on 6.10.1986 by Sub Judge 1st Class, Jalandhar.

3. It may be mentioned here itself that a separate suit [*Civil Suit N: 86 of 1986*] was also filed by the plaintiffs challenging the validity of the decree dated 16.03.1982 in respect of 39 kanals 18 marlas of land of village Salala suffered by Dalip Singh in favour of his 03 grandsons. Since the land pertaining to this suit was held to be self-acquired property of Dalip Singh in civil suit N: 528 of 1985, therefore, this suit was dismissed vide judgement of the same date i.e., 6.10.1986 by the same presiding officer.

4.1 Three separate appeals were filed. The part decreeing of the civil suit N: 528 of 1985 led to filing of two appeals. By way of *Civil Appeal N: 69 of 1988*, plaintiffs challenged the findings of the Trial Court, whereby the land of village Salala was held to be the self-

acquired property of the plaintiffs. Defendant Dalip Singh, on the other hand, filed separate appeal [*Civil Appeal N: 70 of 1988*], challenging the finding of the Trial Court holding the property of village Pattar Kalan to be ancestral in nature. The third appeal [*Civil Appeal N: 68 of 1988*] arising out of the judgment dated 06.10.1986 in Civil Suit N: 86 of 1986, whereby the second suit of the plaintiffs in respect of 39 kanals 18 marlas of land of village Salala, had been dismissed, was filed by the plaintiffs.

4.2 The First Appellate Court of Additional District Judge, Jalandhar, dismissed all the aforesaid three appeals by way of three separate judgments all dated 7.2.1992.

4.3 The dismissal of the three appeals as above, has led to filing of the present three RSAs. RSA N: 98 of 1992 & RSA N: 2243 of 1992 are the offshoot of original civil suit N: 528 of 1985; whereas, RSA N: 1073 of 1992 is the offshoot of original civil suit N: 86 of 1986.

5.1 It is contended by learned senior counsel for the appellants/plaintiffs that suit land is consisted in 06 parcels. The land situated in village Salala was in three parts, i.e. 39 kanals 18 marlas; 45 kanals 18 marlas; and 32 kanals 03 marlas, in which Dalip Singh was a co-sharer. Although, defendants produced a sale deed in favour of Dalip Singh regarding 39 kanals 18 marlas of land, i.e., land of parcel N: A (i), in respect of which Dalip Singh later on suffered a decree dated 16.3.1982 in favour of his three grandsons, but no such sale deed was produced in respect of the

remaining 45 kanals 18 marlas and 32 kanals 03 marlas of the land, i.e. land of parcel No. A (ii) and A (iii) of village Salala. Learned counsel contends further that land of village Pattar Kalan was also in three parcels, i.e. B (i) consisting of 06 kanals 03 marlas, B (ii) consisting of 155 kanals 04 marlas and B (iii) consisting of 08 kanals 07 marlas and all this land of village Pattar Kalan has been found to be ancestral property.

5.2 Learned senior counsel contends that in fact, the entire land of village Pattar Kalan as well as village Salala had been allotted to Dalip Singh in lieu of the land left by him in Pakistan, which was ancestral in his hands, as is evident from the mutation Ex.PB revealing that he (Dalip Singh) had inherited it from his father Hakam Singh, who died on 02.12.1896 and then, the said mutation of inheritance in favour of Dalip was sanctioned on 08.03.1897. It is contended that Special Kanungo, examined during evidence, was required to trace the history of lands of village Pattar Kalan and Salala in lieu of lands left in Pakistan, from Jamabandi for the year 1892-93 Ex.PA but he traced the history of land of village Pattar Kalan only and did not say anything in the Excerpt about the land allotted in village Salala, as he attached incomplete Jamabandi for the year 1942-43 with Excerpt.

5.3 Learned senior counsel contends further that land of parcel A (ii) and A (iii) of village Salala was also the ancestral property just like

the land of village Pattar Kalan; and that land of parcel A (i) measuring 39 kanals 18 marlas was purchased by Dalip Singh from the joint Hindu family funds, since Dalip Singh had no other source of income. It is contended that learned Courts below have simply referred to the sale deed (Ex.D1), which is only in respect of 39 kanals 18 marlas of land and that on that basis the said sale deed, entire land of village Salala could not have been held to be the self-acquired property of Dalip Singh.

5.4 Learned senior counsel contends further that as soon as the plaintiffs came to know of the said fact, they moved an application dated 15.12.1987 before the appellate court so as to cure the defect in Excerpt prepared by the Special Kanungo but Ld. Additional District Judge, without even making mention of this application for additional evidence, dismissed the appeal without due application of mind and thus, there is inherent defect of overlooking the evidence in the impugned judgments, which are liable to be set aside.

CMA No.1-C of 1992 in RSA-982-1992

6.1 Alongwith with present RSA No.982 of 1992 also, the appellants -plaintiffs have moved application bearing No.CMA-1-C of 1992 under Order 41 Rule 27 CPC, stating therein that Excerpt Ex.PB available on record is incomplete, as history of the land has not been traced from the record of the year 1892-93 evident from jamabandi (Ex.PA) and thus, the special Kanungo had attached incomplete jamabandi for the year 1942-43 alongwith the excerpt.

It was the bounden duty of the special Kanungo to prepare the complete excerpt by tracing the history of the suit land from 1892-93. Learned senior counsel contends that this omission was not on the part of the appellants/plaintiffs, rather it was on the part of the officials of the Revenue Department, who were specifically deputed by the Trial Court to prepare the excerpt up to date and to trace the land completely. Learned counsel contends that as the said ambiguity came to notice of the Court, application was moved before the First Appellate Court on 15.12.1987, but the First Appellate Court decided the appeal by leaving the application undecided.

6.2 Learned counsel also contends that the Courts below have held the land of parcel A (ii) and A (iii) of village Salala to be the self-acquired property of defendant-Dalip Singh on the basis of assumption in the absence of *iota* of evidence in this regard. With lot of difficulty, plaintiffs have been able to lay their hands in locating a claim application dated 19.03.1948 and allotment *parchi* issued thereon, revealing that land of village Salala had been allotted to Dalip Singh in lieu of the land left by him in Pakistan, which Dalip Singh had inherited from his ancestors and is thus coparcenary property.

6.3 By way of this application, the appellants prayed for getting prepared the complete excerpt right from the year 1892-93 so as to trace the history of the suit land and also granting permission to

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the appellants to produce the claim application and allotment *parchi* A-1/A-2.

7. The respondents-defendants strongly opposed the application.

8. I have considered submissions of both the sides and have appraised the record carefully.

9. The impugned judgments passed by courts below reveal that the land of village Salala has been held to be self-acquired property of Dalip Singh on the basis of a sale deed dated 23.12.1959 (Ex.D1), whereby Dalip purchased the property from Parmeshwari Devi. This sale deed is only in respect of land measuring 39K-18M falling in parcel A (i). However, the other land mentioned in parcel A (ii) and A (iii) of village Salala, has also been held to be self-acquired property of Dalip Singh, without any evidence on record.

10. Further, the judgment dated 07.02.1992 in Civil Appeal N: 69 & 70 of 1988 of the First Appellate Court [*offshoot of civil suit N: 528 of 1985*] would reveal that there is not even *iota* of reference in respect of the application dated 15.12.1987, which had been moved by the appellants-plaintiffs for producing of additional evidence so as to get the complete revenue Excerpt prepared and also to produce the claim application moved before the Custodian and the allotment *parchi*, which in the facts and circumstances of the case appear to be material documents. Without deciding that application for additional evidence, the First Appellate Court has

decided the appeal on merits, which is certainly an illegal approach.

11. In **Hakam Singh vs State Of Haryana, AIR 2008 SC 2990**, similar was the position before Hon'ble Supreme Court. It was held as under:

“4. Without going into the facts in detail, these appeals can be disposed of on a very short point. It is an admitted position that an application under [Order 41 Rule 27 of the Code of Civil Procedure](#) (In short "CODE") for acceptance of additional evidence was filed before the High Court in the aforesaid First Appeals, which were dismissed by the High Court by the impugned order. However, the application for acceptance of additional evidence under Order 41 Rule 27 of the CODE was not considered by the High Court while disposing of the appeal.

5. That being the position, without going into the legality and propriety of the impugned order of the High Court passed in the aforesaid appeals, we set aside the same and remit back the cases to the High Court for decision of the Appeals afresh on merits and in accordance with law along with the application for acceptance of additional evidence under Order 41 Rule 27 of the CODE.”

12. In **Shaukin Singh vs Bishan Singh, 2012 (7) RCR (Civil) 2773** also, the 1st Appellate Court, without adhering to/deciding the application for additional evidence, dismissed the main appeal on merits. In the circumstance this court held as under:

“9. What cannot possibly be disputed here is that the parties have a statutory right to lead additional evidence and the first

Appellate Court has the power to allow such additional evidence, inter alia, for any other substantial cause, as contemplated under Order 41 Rule 27 CPC. The first Appellate Court was well within its jurisdiction either to allow or to decline the production of additional evidence to a party, as the case may be. But dismissing the main appeals, without deciding the application for additional evidence, renders the judgment and decree of the first Appellate Court, as illegal.”

10. As to whether the defendants were entitled to lead additional evidence or not, is a matter to be decided by the 1st Appellate Court, but the appeal cannot legally be decided on merits, without deciding the application for additional evidence. The law laid down by Hon'ble Apex Court in ***Hakam Singh and M/s Eastern Equipment & Sales Ltd.'s cases (supra)*** "mutatis mutandis" is applicable to the facts of this case and is the complete answer to the problem in hand. Thus, the impugned judgment and decree cannot legally be maintained, in the obtaining circumstances of the case. Therefore, to me, it would be in the interest and justice would be sub-served, if the matter is remanded back to the first Appellate Court in this relevant connection.

13. Same view was taken by this court in ***Mahant Gauri Shanker vs Surjit Kumar, 2011 (30)RCR (Civil) 509*** and ***Joginder Pal Monga vs Jasjit Singh 2020 (2) PLR 265.***

14. In the present case, it is not in dispute that an application dated 15.12.1987 was preferred by the appellants/plaintiffs for additional evidence before the Appellate Court. The Appellate Court has not decided this application, although the appeal as well as cross

appeal have been decided on 07.02.1992. The legal position discussed above make it clear that upon an application under Order 41 Rule 27 CPC being preferred during pendency of the appeal, it is incumbent upon the Appellate Court to consider and decide the same at the time of final decision of the appeal on merits as to whether the documents or the evidence sought to be adduced have any relevance/bearing on the issues involved.

15. The fate of all the appeals shall depend upon the finding regarding the nature of the suit property of village Salala as well as village Pattar Kalan, therefore, without expressing any opinion on the merits of any of these appeals, the judgments and decrees all dated 07.02.1992 in all the three appeals passed by the Appellate Court, are set aside. The matter is remanded back to the first appellate Court of concerned Addl. District Judge with the direction to decide the application under Order 41 Rule 27 CPC as moved in *Civil Appeal N: 69 of 1988*, in accordance with law and then decide the appeals afresh. The Appellate Court shall dispose of the matter expeditiously preferably within a period of nine months from today. The parties shall appear before the Appellate Court on 05.06.2024.

Trial Court record be sent back.

Photocopy of this order be placed on the connected case files.