**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**RSA No.1679 of 2019(O&M)**
Decided on:25.07.2019

Jagdish Singh and others .....Appellants

versus

Sunita and others ....Respondents

**CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN**

Present: Ms.Pratibha Yadav, Advocate,
for the appellants.

**DR.RAVI RANJAN, J. (Oral Judgment)**

This appeal has been preferred by the defendants/appellants which is directed against the Judgement and Decree dated 06.01.2018 passed by the District Judge, Narnaul, in Civil Appeal No.177 of 2015 by which he has upheld the findings of the Civil Judge (Jr.Div.) Narnaul and has affirmed the Judgment and Decree dated 20.04.2015 passed in Civil Case No.630 RBT of 2013.

1. The plaintiff/respondent No.1, Sunita brought a suit with respect to the suit land detailed in the plaint for declaration that the plaintiff is the owner-in-possession being a co-parcener of the Hindu Undivided Family (HUF) to the extent of 1/8$^{th}$ share in the suit estate and is, thus, entitled for exclusive possession of her share by way of partition and further declaration that the release deed bearing No.317 executed by defendant no.1 in favour of defendants no.2 and 3 on 09.07.2010 is illegal, nonest and non-operative *qua* the interest of the plaintiff and also for a decree of perpetual injunction *qua* defendants no.2 and 3 by restraining them from alienating the suit estate by way of sale, mortgage,

etc.

2. Shorn of unnecessary details brief facts for consideration of the *lis* between the parties stands enumerated as under:

The plaintiff/respondent no.1 claimed in the plaint that the suit estate was inherited by her father, Jagdish Singh-defendant no.1 from his forefather which was an ancestral property. As such, defendants no.2 to 7 as well as the plaintiff being co-parceners in the Hindu Joint Family acquired the interest by birth in the aforesaid property equal to that of defendant no.1, i.e. 1/8$^{th}$ share in the property. It has also been stated that no partition has been effected by metes and bounds till date but defendants no.1 to 3, who were in collusion with each other for the purpose of depriving the plaintiff from her right, title and interest in the property and for ousting her from peaceful enjoyment and possession of the same, got executed a release deed No.317 dated 09.07.2010 by the defendant no.1 in favour of defendants no.2 and 3 in respect of the entire suit land. Thus, a declaration has been sought that said released deed is null and void and does not confer any right, title and interest with respect to the property in dispute upon defendants no.2 and 3. The defendants no.2 and 3, after execution of the aforesaid release deed, are planning to alienate the property in dispute with the sole purpose of ousting the plaintiff.

The defendants no.1 to 4 appeared and contested the suit by filing their joint written statement refuting the claim of the plaintiff that the property was inherited by Jagdish Singh (defendant no.1) from his forefather and, as such, defendants no.2 to 7 being co-parceners and the

members of the Hindu Joint Family, have acquired interest in the suit property equivalent to defendant no.1. The claim of the plaintiff that she is in possession and peaceful enjoyment of the suit property, has also been refuted as it is contended that the plaintiff is not residing at Village Banihari, rather after her marriage, she is residing at a different place in her in-laws house. It has further been averred that the release deed with respect to the entire property was executed in accordance with law and is a genuine document and being a title holder of the land in dispute, after the release deed, they have every right to alienate the property by way of sale, mortgage, lease, etc.

Issue of limitation was also raised in the written statement.

The proforma respondents no.2 and 3, i.e., defendants no.6 and 7, did not appear to contest the suit of the plaintiff as such trial Court proceeded *ex parte* against them.

3. On the basis of rival pleadings, the trial Court framed following issues:

> 1. Whether plaintiff is entitled to the relief of declaration with consequential relief injunction as alleged in the headnote of the plaint?OPP
> 2. Whether the present suit is not maintainable?OPD
> 3. Whether plaintiff has conceded the true and material facts from the Court?OPD
> 4. Whether the present suit is hopelessly time barred?OPD
> 5. Relief.

4. Upon consideration of evidence led by the parties and the materials on record including the documentary evidence, the trial Court has held that the plaintiff/respondent No.1, being a co-parcener would be entitled for 1/8$^{th}$ share in the suit property. The suit was decreed holding

the plaintiff to be co-parcener in the suit estate to the extent of 1/8th share entitling her to get her possession severed to the extent of aforesaid share and the defendants were restrained from alienating and encumbering the share of the plaintiff.

The decree was put to challenge in appeal. However, the First Appellate Court has also affirmed the views expressed and findings recorded by the trial Court. Hence, this Regular Second Appeal by the defendants/appellants.

5. In the aforesaid background of factual matrix, this Court has heard the parties and perused the record of this case.

The sole ground which has been raised by the defendants-appellants is that after marriage, the plaintiff, i.e. the daughter of defendant no.1, would not have any right in the suit property as she is also not in possession thereof. It is urged that the amendment made in Section 6 of the Hindu Succession Act, 1956, would not be available to the plaintiff as she was born prior to coming of the aforesaid amendment which cannot have a retrospective effect.

6. Another stand has been taken that the defendant no.1 being *Karta* and manager of the family, has every right to alienate the suit property as and when legally required by him and no order of injunction can be passed against him but the trial Court, in the life time of father, has restrained him from alienating the property and the daughter has been declared as holder of 1/8th of share. It is contended that the daughter's share would only be at best carved out notionally from the share of her father as the entire property would vest in defendant no.1-Jagdish Singh

even if release deed exists.

7. Before coming to the aforesaid issue, it has to be understood as to what is the nature of the suit property? The plaintiff claimed that it is an ancestral property. It has been noticed by both the Courts below that even in the release deed it has been declared that the suit property is ancestral. Therefore, it becomes admitted position that the property is ancestral in nature and neither the plaintiff nor the defendants disputes it.

8. Thereafter, the second question arises, whether the plaintiff is entitled to get her 1/8$^{th}$ share separated even the life time of her father? For the aforesaid purpose, it would be apt to quote Section 6 of the Hindu Succession Act, 1956, as amended vide Hindu Succession (Amendment) Act, 2005 (39 of 2005) which is as under:

> "6. **Devolution of interest in coparcenary property.**—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—
>
> (a) by birth become a coparcener in her own right the same manner as the son;
>
> (b) have the same rights in the coparcenery property as she would have had if she had been a son;
>
> (c) be subject to the same liabilities in respect of the said coparcenery property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:
>
> Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.
>
> (2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.
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> (3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenery property shall be deemed to have been divided as if a partition had taken place and,—
>
> (a) the daughter is allotted the same share as is allotted to a son;
>
> (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall

> be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
>
> (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.
>
> *Explanation.*—For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.
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> (4) After the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:
>
> Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), nothing contained in this sub-section shall affect—
>
> (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or
>
> (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 (39 of 2005) had not been enacted.
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> *Explanation.*—For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005).
>
> (5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.
>
> *Explanation.*—For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court"

It is apparent from the amendment that the daughter of a co-parcener shall by birth becomes a co-parcener in her own right in the same manner as a son and she would have same rights in the co-parcenery property as she would have if she had been a son. The effect of this happened to be the subject matter of consideration of various Courts including the Apex Court. The issue was as to whether the right would be conferred only upon the daughters who were born after the September 5, 2005, when the Hindu Succession (Amended) Act, 2005, came into force or even to those daughters who were born earlier. The controversy was

set at rest by the Hon'ble Apex Court in **"Prakash and others vs. Phulavati and others," (2016) 2 SCC 36,** approving the Full Bench decision of Bombay High Court, holding that rights under the amendment are applicable to the living daughters of living co-parceners as on 09.09.2005, irrespective of the date on which such daughters were born. The Hon'ble Apex Court in **"Danamma @ Suman Surpur and another vs. Amar and others", (2018) 3 SCC 343,** has held that the amended Section 6 of the Act, stipulates that on and from the Amendment Act, 2005, the daughter of a co-parcener shall by birth become a co-parcener in her own right in the same manner as the son. As a natural corollary to that it become clear that her right to seek partition has not been abrogated as the right is inherent and can be availed by any co-parcener, even a daughter who is now a co-parcener. This *ratio* has been found to be applicable also in a suit for partition which was filed in the year 2002, i.e., prior to amendment, which remained pending in the year 2005.

9. Having anxious consideration to the aforesaid aspect and the legal provisions and pronouncement by the Hon'ble Apex Court and on considerations of the materials on record, it becomes clear that defendant no.1-Jagdish Singh, inherited ancestral property and he was having two sons, i.e., defendants no.2 and 3, Dilbag and Rajesh, respectively, and four daughters, i.e., plaintiff and defendants no.5 to 7. This having been a situation, both the Courts below have rightly held that the plaintiff would be entitled for 1/8$^{th}$ share in the property as, at the time of filing of the suit, she was a daughter of a co-parcener in the family, and as such, had become a co-parcener in her own right and thus, she would have co-

parcenery right over the property just equivalent to the son. This would also be apparent that being a co-parcener, she would have a right seek partition and for carving out her share. Her marriage to a different family would not abrogate her right in the co-parcenery property being a daughter of a co-parcener in the Hindu Undivided Family (HUF). So far the extent of share is concerned, the findings recorded by both the Courts below has to be upheld and affirmed because defendant no.1- Jagdish Singh and, the sons and daughters as also the wife of Jagdish Singh, i.e., the mother of the plaintiff and defendants no.2 to 7 would also be entitled for her share equivalent to that of sons and daughters as it is trite law that the wife of a co-parcener, though cannot seek partition in the family, but at the time of partition, her share equivalent to that of son or daughter would have to be carved out.

10. Having regard to the aforesaid discussion, this Court is of the opinion that the appellants have not been able to raise any cogent ground or substantial question of law warranting interference in the Judgements and Decrees and the view, which stands concluded by the concurrent finding of the Courts below.

In the result, this appeal, being devoid of any merit, is dismissed. However, there would be no order as to costs.

**(DR. RAVI RANJAN)**
**JUDGE**

**July 25, 2019**
*dharamvir*

Whether speaking/reasoned Yes.
Whether Reportable Yes.