Supreme Court of India
Sher Singh & Ors vs Gamdoor Singh on 13 December, 1996
Bench: K. Ramaswamy, G.T. Nanavati

PETITIONER:
SHER SINGH & ORS.

Vs.

RESPONDENT:
GAMDOOR SINGH

DATE OF JUDGMENT: 13/12/1996

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

We have heard learned counsel on both sides. This appeal, by special leave, arises from the judgment and order of the Punjab and Haryana High Court, made on December 8, 1995 in RSA No. 2617/95.

The appellants had filed suit No.8 of 9.2.1978 against Arjan Singh, son of Badan Singh in the Court of Sub Judge, III class, Patiala for declaration that the plaintiffs in that suit were owners and were in possession from 1968 to the extent of 5/6 share, along with the defendant, of agricultural land admeasuring 74 kanals 12 marlas comprised in Khewat Khata Nos.5/5 Khasra No.68/1(7-10) etc. situated in village Ghagga, Tehsil Samana, District Patiala. Arjan Singh had admitted in his pleadings that the property was ancestral Hindu Joint Family and suffered a decree. The present suit came to be filed by Gamdoor Singh, the respondent in this case for a declaration that the decree therein was collusive decree and did not bind him. The trial Court granted the decree. On the appeal it was confirmed and Second Appeal was dismissed. Thus this appeal by Special Leave.

It is contended by Shri Ujjagar Singh, learned senior counsel for the appellants, that unless the respondent establishes that exists Joint Hindu Family of three succeeding generations, there is no presumption that the property is the co-parcenary property. Therefore, the view of the Courts below

that it is a co-parcenary property and that the respondent by virtue of his birth in the family is entitled to 1/6 share in the property and the previous decree to which he was not member does not bind him, is not correct in law. We do not find any force in the contention. It was their own case in the previous suit that it is ancestral property and that Arjan Singh and his sons are members of the join family. Once the existence of joint family was not in dispute, necessarily the property held by the family assumed the character of a co-parcenary property and every member of the family would be entitled by birth to share in the co-parcenary property unless any one of the co- parceners pleads, by separate pleadings, and proves that some of the properties or all the properties are his self-acquired properties and could not be blended in the co- parcenary property.

It is settled law that even the self-acquired property can also be blended into the joint family hotchpoch enveloping the character of co-parcenary property. It is also not pleaded in the written statement that it is not joint family property. The very first issue by the trial Court which was not objected to was whether the property was ancestral property of the parties? The second issue was whether the plaintiff is entitled to joint possession of the suit land and the third issue was whether the previous decree bound the respondent? Under those circumstances, both the parties proceeded on the premise that it was a co- parcenary property belonging to the Joint Hindu Family. The finding recorded by all the courts is that the property belonged to Joint Hindu Family. Therefore, the finding that the respondent is entitled to 1/6 of share by virtue of his birth is well justified and the finding that the previous decree does not bind him as being tainted with fraud, is not vitiated by any error of law.

It is also an admitted fact that he was not a party to the earlier suit and the decree was granted without his consent. Under those circumstances, the finding that it is a collusive decree is a finding of fact based on appreciation of evidence. Under those circumstances, we do not find any substantial question of law warranting interference.

The appeal is accordingly dismissed. No costs.