

[2013] 7 S.C.R. 897

ROHIT CHAUHAN

v.

SURINDER SINGH & ORS.
(Civil Appeal No.5475 of 2013)

JULY 15, 2013

[CHANDRAMAULI KR. PRASAD AND
V. GOPALA GOWDA, JJ.]

HINDU LAW:

'Coparcenary property' - 'Coparcener' - Held: Coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor - So long, on partition, an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property and if a son is subsequently born, the alienation made before the birth cannot be questioned - But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener - Therefore, in the instant case, sale deeds and release deed executed by the father after the birth of his son, to the extent of the entire property are illegal, null and void.

The plaintiff-appellant filed a suit for declaration that the alienation of suit property, viz. 8 Kanals of land by sale deed executed by his father (defendant no. 2) on 19.05.2000 in favour of defendant nos. 3 to 5 and of 96 Kanals of land by release deed dated 28.05.2004 in favour of defendant no. 1 was null and void in as much as the property under the release deed was the ancestral property received by defendant no. 2 under a family

A partition and the property under the sale deeds was purchased by him from the joint family funds. The trial court decreed the suit, but the first appellate court reversed the decree holding that the property received by defendant no. 2 on partition lost the character of coparcenary property and became the self-acquired property of defendant no. 2. Plaintiff's second appeal was dismissed in limine.

Allowing the appeal, the Court

C HELD: 1.1 Coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the Joint Hindu D family and before commencement of Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest E in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. [Para 8] [905-C-E]

F 1.2 So long, on partition, an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property and if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the G property becomes a coparcenary property and the son would acquire interest in that and become a coparcener. [Para 8] [905-E-G]

H *M. Yogendra v. Leelamma N.* 2009 (12) SCR 38 = (2009) 15 SCC 184 - relied on.

Bhanwar Singh v. Puran, 2008 (2) SCR 775 = (2008) 3 SCC 87 - distinguished. A

1.3 In the instant case, it is an admitted position that the property which defendant no. 2 got on partition was an ancestral property and till the birth of the plaintiff he was sole surviving coparcener but the moment plaintiff was born, he got a share in the father's property and became a coparcener. In view of the settled legal position, therefore, after the birth the plaintiff, defendant no. 2 could have alienated the property only as Karta for legal necessity, which contingency did not arise in the instant case. Therefore, the sale deeds and the release deed executed by defendant no. 2 to the extent of entire coparcenary property are illegal, null and void. The judgment and decree of the lower appellate court as affirmed by the High Court is set aside and that of the trial court restored. [Para 10 and 12] [906-G-H; 907-A-B, D] B C D

Case Law Reference:

2009 (12) SCR 38	relied on	Para 8	E
2008 (2) SCR 775	distinguished	Para 7	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5475 of 2013.

From the Judgment and Order dated 04.05.2011 of the High Court of Punjab and Haryana at Chandigarh in RSA No. 1992 of 2011. F

L. Nageshwar Rao, Mishra Saurabh for the Appellant.

Satinder S. Gulati, Kamaldeep Gulati and Gaurav Sharma for the Respondents. G

The Judgment of the Court was delivered by

A **CHANDRAMAULI KR. PRASAD, J.** 1. Sole plaintiff Rohit Chauhan is the appellant before us. His grandfather Budhu had three sons, namely, Gulab Singh, Zile Singh and one Ram Kumar. Gulab Singh, father of the plaintiff, has been arrayed as defendant no. 2, whereas son of Zile Singh i.e.

B Surinder Singh figures as defendant no. 1 in the suit. In partition between Budhu and his three sons, defendant no. 2 got 1/4 share i.e., 72 Kanals of land. In the said partition Budhu also got 72 Kanals of land and he bequeathed 1/4 of his share i.e., 18 Kanals to each of his three sons and kept with himself 18

C Kanals. After the death of Budhu, defendant no. 2 inherited 1/3 share i.e., 6 Kanals and in this way plaintiff's father Gulab Singh, defendant no. 2, got 96 Kanals of land. Defendant No.2 during his lifetime also acquired 8 Kanals of land from the income of the properties which he got in partition amongst his

D father and brothers. At the time of partition defendant no. 2 was unmarried. But later on, Gulab Singh was married to defendant no. 7, Rajesh Rani and from the wedlock the plaintiff as also defendant no. 6 were born. Plaintiff was born on 25th of March, 1982. Plaintiff alleged that his father defendant no. 2 executed two separate sale deeds on 19th of May, 2000 selling 8 Kanals

E of land acquired from joint family funds to defendant nos. 3 to 5. It is further allegation of the plaintiff that his father illegally gifted 96 Kanals of land in favour of defendant no. 1 Surinder Singh, the son of his real brother Zile Singh by way of release deed dated 28th of May, 2004. On the basis of the release

F deed and the sale deeds, the defendants claiming interest therein got their names mutated and attested in the revenue records. It is the case of the plaintiff that the property received by his father is ancestral property and, therefore, alienation of the same by him is null and void. On the basis of the aforesaid

G pleadings, the plaintiff prayed for declaration that the release deed, sale deeds and the mutation entries made on that basis are illegal, null and void and not binding on him, Varsha (defendant no. 6) and Rajesh Rani (defendant no. 7).

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2. Defendant no. 1 contested the suit and, according to him, the plaintiff, his mother Rajesh Rani and minor sister Varsha were living separately from defendant No. 2 and there was no good relation between them. They were not even on talking terms. According to defendant no. 1, he and his family members were rendering service and giving honour to defendant no. 2 and he was residing with them as their family member. Defendant no. 1 further averred that out of love, affection and service rendered by him, defendant no. 2 was pleased and, as such, he executed a release deed in his favour and on that basis mutation entries were made. It is the plea of defendant no.1 that the land in question became the self acquired property of defendant no. 2 after partition and, therefore, he was competent to transfer the property in the manner he desired. Defendant no. 1 further alleged that the sale deed executed by defendant no. 2 in favour of defendant nos. 3 to 5 is legal and valid. Defendant no. 2 supported the case of defendant no. 1 and adopted the written statement filed by him. Defendant nos. 3 to 5 filed their separate written statements and supported the plea of defendant no. 1 and averred that the sale deeds and the release deed were validly executed. On the basis of the aforesaid pleading of the parties various issues have been framed including the following issues:

"1. Whether the plaintiff is entitled to a decree for declaration to the effect that impugned release deed dt.28.5.2004 and mutation no.3365 entered and attested in lieu of impugned release deed and further two sale deeds dt.19.5.2000 bearing no.272/1 and 273/1 and mutation no.3110 and 3106 entered and attested on the basis of impugned two sale deeds and further revenue entries are wrong, illegal and not binding on the rights of the plaintiff and defendants no. 6 & 7?"

3. The trial court, on analysis of the materials placed on record and the legal position, came to the conclusion that the property which defendant no. 2 got by virtue of the partition

A decree amongst his father and brothers was although separate property qua other relations but it attained the characteristics of coparcenary property after the plaintiff Rohit Chauhan was born. The finding recorded by the trial court in this regard reads as follows:

B "21. No doubt Gulab Singh got some of his share in the
C property described in para no. 1(a) of the plaint through
his father Budhu vide mutation no. 3089 in which the father
D Budhu suffered a decree in favour of defendant no. 1 along
with Zile Singh and Ram Kumar of 3/4th share but in the
year 1969 when the said decree was passed Gulab Singh
was unmarried and he had got alienated the land which
had come to his share when Rohit Chauhan, Plaintiff came
into existence i.e. on 25.3.1982. Meaning thereby that the
property which Gulab Singh had got by the decree was
although his separate property qua other relation but
became JHF property immediately when Rohit Chauhan
was born thereby getting characteristic of coparcenary
property."

E Accordingly, the trial court decreed the suit.

4. Defendant no. 1, aggrieved by the same, preferred
appeal and it was his plea that the property received by
defendant 2 on partition will become his separate property and
requires to be treated as his self acquired property and,
F therefore, defendant no. 2 was free to deal with the property in
the manner he liked. In other words, according to defendant no.
1, after partition the property falling in the share of defendant
no. 2 lost its character as a coparcenary property and assumed
the status of self acquired property. The aforesaid plea found
G favour with the lower appellate court and it held that the property
which defendant no. 2 got on partition "lost the character of
coparcenary property and became the self acquired property
of Gulab Singh". The lower appellate court further held that once
the property is held to be self acquired property of Gulab Singh,

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he had every right to deal with the same in any manner he liked. A
Relevant portion of the judgment of the lower appellate court
reads as follows:

"13. In the light of above said precedents it can be readily B
concluded that only when the property which is received
by a person from his ancestors by survivorship can be held
to be ancestral/coparcenary property and any other
property which although, might have been received from
the ancestors by means of will or consent decree or a father
partitioned the property, will loose its character as that of C
coparcenary property and will become self acquired
property in the hands of person receiving it. Applying these
precedents to the facts of the present case, this Court will
conclude that approximately 96 Kanals of land was
received by Gulab Singh from his father Budhu on the basis
of consent decree or on the basis of will and not by D
survivorship and this property lost the character of
coparcenary property and was self acquired property of
Gulab Singh. The version of plaintiff/respondent no. 1 in
the present case is that rest of the property was acquired
by Gulab Singh with the funds originated from joint Hindu E
family property and the said property also assumed the
character of joint Hindu family property, also cannot be
sustained because the major chunk of land in the hands
of Gulab Singh has been held to be non-ancestral property
and rather self acquired property of Gulab Singh. F

14. Once the property involved in the suit has been held
to be self acquired property of Gulab Singh then Gulab
Singh was having every right to deal with the same in any
manner he liked and no embargo can be put on the rights
of Gulab Singh as well as his rights to alienate the suit
property are concerned and thus neither release deed nor
sale deeds executed by Gulab Singh can be questioned
by anyone much less by son of Gulab Singh....." G

5. Accordingly, the lower appellate court allowed the H

A appeal and set aside the judgment and decree of the trial court and dismissed the suit.

6. Plaintiff, aggrieved by the same, preferred second appeal and the High Court dismissed the second appeal in
B limine and, while doing so, observed as follows:

".....Finding of the lower appellate court that the suit
land is not proved to be ancestral or coparcenary property
is fully justified by the documentary evidence and admitted
facts....."

C This is how the plaintiff is before us.

Leave granted.

7. Mr. L.Nageshwar Rao, learned Senior Counsel
D appearing on behalf of the plaintiff-appellant submits that at the
time when the plaintiff's father Gulab Singh got the property in
partition, it was his separate property vis-à-vis his relations but
after the birth of the plaintiff on 25th of March, 1982, plaintiff
acquired interest in the property as a coparcener. Mr. Satinder
E S. Gulati, learned Counsel appearing on behalf of the
defendant-respondents, however, submits that once the
property fell into the share of the plaintiff's father Gulab Singh,
it lost the character of a coparcenary property and the said
status will not change on the birth of the plaintiff. He points out
F that even if plaintiff Rohit Chauhan was born at the time of
partition between defendant no. 2, his father and brothers,
plaintiff would not have got any share under Section 8 of the
Hindu Succession Act. In support of the submission he has
G placed reliance on a judgment of this Court in the case of
Bhanwar Singh v. Puran, (2008) 3 SCC 87 and our attention
has been drawn to the following passage from the said
judgment:

"13. Section 6 of the Act, as it stood at the relevant time,
provided for devolution of interest in the coparcenary
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property. Section 8 lays down the general rules of succession that the property of a male dying intestate devolves according to the provisions of the Chapter as specified in Clause (1) of the Schedule. In the Schedule appended to the Act, natural sons and daughters are placed as Class I heirs but a grandson, so long as father is alive, has not been included. Section 19 of the Act provides that in the event of succession by two or more heirs, they will take the property per capita and not per stripes, as also tenants-in-common and not as joint tenants."

8. We have bestowed our consideration to the rival submission and we find substance in the submission of Mr. Rao. In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the Joint Hindu family and before commencement of Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener. The view which we have taken finds support from a judgment of this Court in the case of *M. Yogendra v. Leelamma N.*, (2009) 15 SCC 184, in which it has been held as follows:

A "29. It is now well settled in view of several decisions of
this Court that the property in the hands of a sole
coparcener allotted to him in partition shall be his separate
property for the same shall revive only when a son is born
to him. It is one thing to say that the property remains a
B coparcenary property but it is another thing to say that it
revives. The distinction between the two is absolutely clear
and unambiguous. In the case of former any sale or
alienation which has been done by the sole survivor
coparcener shall be valid whereas in the case of a
C coparcener any alienation made by the karta would be
valid."

9. Now referring to the decision of this Court in the case
of *Bhanwar Singh* (supra), relied on by respondents, the same
is clearly distinguishable. In the said case the issue was in
D relation to succession whereas in the present case we are
concerned with the status of the plaintiff vis-à-vis his father who
got property on partition of the ancestral property.

10. A person, who for the time being is the sole surviving
E coparcener as in the present case Gulab Singh was, before
the birth of the plaintiff, was entitled to dispose of the
coparcenary property as if it were his separate property. Gulab
Singh, till the birth of plaintiff Rohit Chauhan, was competent
to sell, mortgage and deal with the property as his property in
F the manner he liked. Had he done so before the birth of plaintiff,
Rohit Chauhan, he was not competent to object to the alienation
made by his father before he was born or begotten. But, in the
present case, it is an admitted position that the property which
defendant no. 2 got on partition was an ancestral property and
G till the birth of the plaintiff he was sole surviving coparcener but
the moment plaintiff was born, he got a share in the father's
property and became a coparcener. As observed earlier, in
view of the settled legal position, the property in the hands of
defendant no. 2 allotted to him in partition was a separate
H property till the birth of the plaintiff and, therefore, after his birth

defendant no. 2 could have alienated the property only as Karta A
for legal necessity. It is nobody's case that defendant no. 2
executed the sale deeds and release deed as Karta for any
legal necessity. Hence, the sale deeds and the release deed
executed by Gulab Singh to the extent of entire coparcenary
property are illegal, null and void. However, in respect of the B
property which would have fallen in the share of Gulab Singh
at the time of execution of sale-deeds and release deed, the
parties can work out their remedies in appropriate proceeding.

11. In view of what we have observed above, the view C
taken by the lower appellate court as affirmed by the High Court
is erroneous in law.

12. In the result, we allow this appeal, set aside the D
judgment and decree of the lower appellate court as affirmed
by the High Court and restore that of the trial court with the
liberty aforementioned. In the facts and circumstances of the
case, there shall be no order as to costs.

R.P.

Appeal allowed.