ARSHNOOR SINGH

v.

HARPAL KAUR & ORS.

(Civil Appeal No. 5124 of 2019)

JULY 01, 2019

[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.]

Family Law – Succession under Mitakshara Law – Appellant is the great-grandson of one 'LS', who was the owner of large tracts of agricultural land – 'LS' passed away in 1951, and his entire property was inherited by his only son 'IS' – This property was partitioned between three sons of 'IS' – Present matter pertains to the property ('suit property') which came to the share of one of his sons viz. 'DS', father of the appellant – 'DS' had only one son, the Appellant, who was born to 'DS' through his 1st wife –'DS' purportedly sold the entire suit property to Respondent No.1 vide *two registered Sale Deeds dtd. 01.09.99 – Subsequently, 'DS' got married to Respondent No.1– Appellant filed suit against 'DS' and Respondent No.1, for declaration that the suit property was coparcenary property, and hence the two Sale Deeds in favour of Respondent No.1 were illegal, null and void – Suit decreed in favour of the appellant – Respondent No.1 along with the subsequent purchasers, Respondent Nos. 2 & 3 filed common appeal – Dismissed – Respondent Nos.1-3 filed second appeal – High Court allowed the appeal – Held: In the present case, the succession opened in 1951 on the death of 'LS', prior to the commencement of the 1956 Act – Nature of the property inherited by his son 'IS' was coparcenary – Under* Mitakshara *law, whenever a male ancestor inherits any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him, would get an equal right as coparceners in that property – Even though 'IS' had effected partition of the coparcenary property amongst his sons in 1964, the nature of the property inherited by his sons would remain as coparcenary property* qua *their male descendants upto three degrees below them – Property allotted to 'DS' in partition continued to remain coparcenary property* qua *his son, the appellant–*

A *Appellant became coparcener in the suit property on his birth i.e. on 22.08.85 – Respondent No.1 failed to discharge the burden of proving that 'DS' had executed the two Sale Deeds in her favour out of legal necessity or for the benefit of the estate – In fact, as per record, the Sale Deeds were without any consideration whatsoever* B *– Sale Deeds dtd. 01.09.99 cancelled as being illegal, null and void – Consequently, subsequent Sale Deed dtd. 30.10.07 executed by Respondent No.1 in favour of Respondent Nos.2 & 3 is hit by the doctrine of* lis pendens *– Judgment of the Single Judge, set aside – Hindu Succession Act, 1956 – Doctrine of* lis pendens.

C *Family Law – Power of* Karta *to sell coparcenary property – Held: Power of Karta to sell coparcenary property is subject to certain restrictions viz. the sale should be for legal necessity or for the benefit of the estate – Onus for establishing the existence of legal necessity is on the alienee.*

Doctrines – Doctrine of lis pendens *– Principle of – Discussed.*

D

Allowing the appeal, the Court

HELD:1.1 'IS' had inherited the entire suit property from his father 'LS' upon his death. The succession in this case opened in 1951 prior to the commencement of the Hindu Succession Act, E **1956 when 'IS' succeeded to his father 'LS's property in accordance with the old Hindu *Mitakshara* law. Under *Mitakshara* law, whenever a male ancestor inherits any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him, would get an equal right as coparceners in that property. After the Hindu Succession** F **Act, 1956 came into force, this position has undergone a change. Post – 1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired property, and does not remain coparcenary property. If succession opened under the old Hindu law, i.e. prior to the commencement** G **of the Hindu Succession Act, 1956, the parties would be governed by *Mitakshara* law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-à-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property**

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even after the commencement of the Hindu Succession Act, 1956. [Paras 7, 7.3, 7.5 and 7.6] [1009-F; 1011-F-H; 1012-A-B]

1.2 In the present case, the succession opened in 1951 on the death of 'LS'. The nature of the property inherited by his son 'IS' was coparcenary in nature. Even though 'IS' had effected a partition of the coparcenary property amongst his sons in 1964, the nature of the property inherited by 'IS's sons would remain as coparcenary property *qua* their male descendants upto three degrees below them. In the present case, the entire property of 'LS' was inherited by his son 'IS' as coparcenary property prior to 1956. This coparcenary property was partitioned between the three sons of 'IS' by the court *vide* a decree of partition dated 04.11.1964. The shares allotted in partition to the coparceners, continued to remain coparcenary property in their hands *qua* their male descendants. As a consequence, the property allotted to 'DS' in partition continued to remain coparcenary property *qua* the Appellant. The suit property which came to the share of late 'DS' through partition, remained coparcenary property *qua* his son – the Appellant, who became a coparcener in the suit property on his birth i.e. on 22.08.1985. [Paras 7.7, 7.9, 7.10 & 7.12] [1012-B, C, G-H; 1013-A, G-H]

1.3 The power of a *Karta* to sell coparcenary property is subject to certain restrictions *viz.* the sale should be for legal necessity or for the benefit of the estate. The onus for establishing the existence of legal necessity is on the alienee. In the present case, the onus was on the alienee i.e. Respondent No. 1 to prove that there was a legal necessity, or benefit to the estate, or that she had made *bona fide* enquiries on the existence of the same. Respondent No.1 has completely failed to discharge the burden of proving that 'DS' had executed the two Sale Deeds dated 01.09.1999 in her favour out of legal necessity or for the benefit of the estate. In fact, it has come on record that the Sale Deeds were without any consideration whatsoever. 'DS' had deposed before the Trial Court that he sold the suit property to Respondent No.1 without any consideration. Respondent No.1 had also admitted before the Collector, Ferozepur that the Sale Deeds were without consideration. Hence, the ground of legal necessity or benefit of the estate falls through. As a consequence,

the Sale Deeds dated 01.09.1999 are hereby cancelled as being illegal, null and void. 'DS' could not have sold the coparcenary suit property, in which the Appellant was a coparcener, by the aforesaid alleged Sale Deeds. [Paras 8-8.4] [1014-B, G; 1015-A-D]

1.4 Since Respondent No. 1 has not obtained a valid and legal title to the suit property through the Sale Deeds dated 01.09.1999, she could not have passed on a better title to Respondent Nos. 2 & 3 either. The subsequent Sale Deed dated 30.10.2007 executed by Respondent No.1 in favour of Respondent Nos. 2 & 3 is hit by the doctrine of *lis pendens*. The underlying principle of the doctrine of *lis pendens* is that if a property is transferred *pendente lite*, and the transferor is held to have no right or title in that property, the transferee will not have any title to the property. The Sale Deed dated 30.10.2007 executed by Respondent No.1 in favour of Respondent Nos.2 & 3 being null and void, is hereby cancelled. The Appellant being a male coparcener in the suit property, was vitally affected by the purported sale of the suit property by his father. The Appellant therefore had the locus to file the Suit for a Declaration that the suit property being coparcenary property, could not have been sold by his father without legal necessity, or for the benefit of the estate. The very fact that the Sale Deeds dated 01.09.1999 were executed without any consideration, would itself show that the suit property was sold without any legal necessity. Being coparcenary property, it could not have been sold without legal necessity, or for the benefit of the estate. Judgment passed by the Single Judge of the High Court *vide* the Impugned Order dated 13.11.2018, being contrary to law, is set aside. The Sale Deeds dated 01.09.1999 executed by 'DS' in favour of Respondent No. 1 are hereby cancelled and set aside. Consequently, the subsequent Sale Deed dated 30.10.2007 executed by Respondent No.1 in favour of Respondent Nos. 2 & 3 during the pendency of proceedings is illegal, and hereby cancelled and set aside. The name of the Appellant is to be recorded in the *Jamabandis* as the owner of the suit property. [Paras 9, 10-10.2 11] [1015-E-G; 1016-A-F]

Shyam Narayan Prasad v. Krisha Prasad & Ors. **(2018) 7 SCC 646 : [2018] 5 SCR 36 ;** *Yudhishter v. Ashok Kumar* **(1987) 1 SCC 204 : [1987] 1 SCR 516 ;** *Valliammai Achi v. Nagappa Chettiar and Ors.* **AIR 1967 SC 1153 : [1967] SCR 448 ;** *Rani & Anr. v. Santa Bala Debnath & Ors.* **(1970) 3 SCC 722 : [1971] 2 SCR 603 ;** *Vijay A. Mittal & Ors. v. Kulwant Rai (Dead) through LRs & Ors*. **(2019) 3 SCC 520 : [2019] 2 SCR 507 ;** *T.G. Ashok Kumar v. Govindammal & Ors.* **(2010) 14 SCC 370 : [2010] 14 SCR 560 – relied on.**

Uttam v. *Saubhag Singh* **(2016) 4 SCC 68 – held inapplicable.**

Mulla on Hindu Law **(22nd Edition) Pg. 372 – referred to.**

Case Law Reference

(2016) 4 SCC 68	**held inapplicable**	**Para 5**
[2018] 5 SCR 36	**relied on**	**Para 7.2**
[1987] 1 SCR 516	**relied on**	**Para 7.4**
[1967] SCR 448	**relied on**	**Para 7.11**
[2019] 2 SCR 507	**relied on**	**Para 8.1**
[1971] 2 SCR 603	**relied on**	**Para 8.1**
[2010] 14 SCR 560	**relied on**	**Para 9**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5124 of 2019.

From the Judgment and Order dated 13.11.2018 of the High Court of Punjab and Haryana at Chandigarh in RSA No. 1354 of 2014.

Manoj Swarup, Sr. Adv., Ankit Swarup, Dr. Mansi Jain, Ms. Vidisha Swarup, Advs. for the Appellant.

Anuj Bhandari, Abhinav Srivastava, Siddhartha Jha, Advs. for the Respondents.

A The Judgment of the Court was delivered by

INDU MALHOTRA, J. Leave granted.

1. The present Civil Appeal has been filed to challenge the Order dated 13.11.2018 passed in RSA No. 1354 of 2014 by the Punjab & Haryana High Court at Chandigarh.

B

2. The background facts in which the present Civil Appeal has been filed are briefly stated as under:

2.1. Lal Singh was the owner of large tracts of agricultural land in Village Khangarh, District Ferozepur, Punjab. The Appellant herein is the great-grandson of Lal Singh.

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The genealogy table of Lal Singh's family is set out hereinbelow for the sake of convenience:

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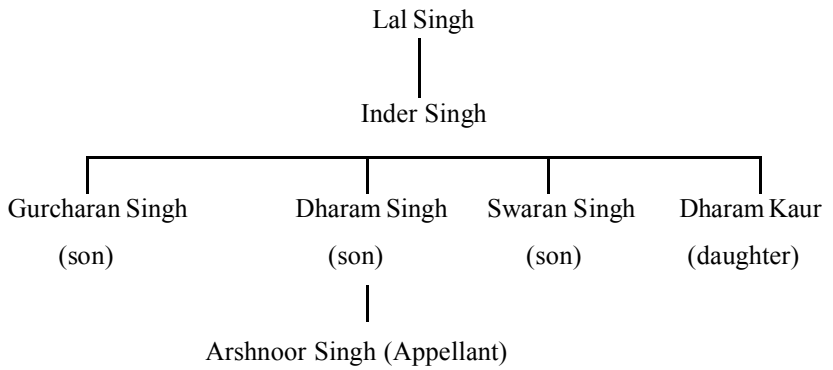

E

2.2. Lal Singh passed away in 1951, and his entire property was inherited by his only son Inder Singh. In 1964, Inder Singh during his lifetime, effected a partition of the entire property *vide* decree dated 04.11.1964 passed in Civil Suit No. 182 of 4.11.1962 between his three sons *viz*. Gurcharan Singh, Dharam Singh, and Swaran Singh in equal shares.

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Thereafter, the three sons transferred one-fourth share in the entire property back to their father Inder Singh for his sustenance. As a consequence, Inder Singh and his three sons held one-fourth share each in the property.

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Inder Singh expired on 15.04.1970, and his one-fourth share was inherited by his heirs i.e. his widow, three sons, and his daughter.

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2.3. The present matter pertains to the property which came to the share of one of his sons *viz*. Dharam Singh (hereinafter referred to as the "suit property"), which was agricultural land comprised of about 119 kanals 2 marlas, situated in Village Khangarh, District Feozepur, Punjab.

2.4. Dharam Singh had only one son *viz*. Arshnoor Singh – the Appellant herein. The Appellant was born on 22.08.1985 to Dharam Singh through his 1st wife.

2.5. Dharam Singh purportedly sold the entire suit property to Respondent No. 1 *viz*. Harpal Kaur *vide* two registered Sale Deeds dated 01.09.1999 for an ostensible sale consideration of Rs. 4,87,500/-.

The first Sale Deed bearing Wasika No. 1075 pertains to land admeasuring 59 kanals 11 marlas situated in Khasra No. 35; the second Sale Deed bearing Wasika No. 1079 pertains to land admeasuring 59 kanals 11 marlas in Khasra No. 36.

2.6. On 21.09.1999, the two Sale Deeds were sent by the Sub Registrar to the Collector, Ferozepur for action u/S. 47A of the Indian Stamp Act, 1999 as the Sale Deeds were undervalued.

Dharam Singh and Respondent No. 1 – Harpal Kaur appeared before the Collector. Dharam Singh admitted that no consideration was exchanged in lieu of the two Sale Deeds, and the amount of Rs. 4,87,500/- was mentioned only for the purpose of registration.

Respondent No. 1 – Harpal Kaur, the purported vendee, admitted that no money was paid by her to Dharam Singh in exchange for the suit property.

2.7. Subsequently, on 29.09.1999, Dharam Singh got married to Respondent No. 1.

The Collector, Ferozepur *vide* Order dated 24.01.2000, held that the two Sale Deeds executed by Dharam Singh in favour of Respondent No. 1 were without any monetary transaction.

2.8. The Appellant became a major on 22.08.2003.

On 23.11.2004, the Appellant filed a Suit for Declaration against his father Dharam Singh as Defendant No. 1, and Harpal Kaur as Defendant No. 2 (Respondent No. 1 herein) for a declaration that the suit property was coparcenary property, and hence the two Sale Deeds dated 01.09.1999 executed by his father Dharam Singh in favour of Respondent No. 1 herein were illegal, null and void. The Appellant further prayed for a permanent injunction restraining Respondent No. 1 from further alienating, transferring, or creating a charge on the suit property.

2.9. During the pendency of the Suit, Respondent No. 1 entered into a transaction whereby she purportedly sold the suit property jointly to Respondent Nos. 2 & 3 *viz*. Kulwant Singh and Jung Bahadur *vide* a Sale Deed dated 30.10.2007.

Respondent No. 1 filed an Application to Implead Respondent Nos. 2 & 3 as co-defendants in the Suit. However, the said Application was disposed of *vide* Order dated 25.09.2010, with liberty granted to Respondent No. 1/Defendant No. 2 to defend their rights.

2.10. The Additional Civil Judge, Ferozepur *vide* Order dated 29.04.2011, decreed the Suit in favour of the Appellant Plaintiff.

Dharam Singh in his deposition had stated that he executed the Sale Deeds without any monetary consideration since Respondent No. 1 insisted on transfer of the suit property in her name as a pre-condition for marriage.

The Trial Court held that the suit property was ancestral coparcenary property of Dharam Singh and the Appellant. Respondent No. 1 failed to prove that Dharam Singh had sold the suit property to Respondent No. 1 for either legal necessity of the family, or for the benefit of the estate. Consequently, the two Sale Deeds dated 01.09.1999 purportedly executed by Dharam Singh in favour of Respondent No. 1/Defendant No. 2 were illegal, null and

void. The Appellant was held entitled to joint possession of the suit property with his father.

2.11. Respondent No. 1 along with the subsequent purchasers – Respondent Nos. 2 & 3 filed a common Civil Appeal RBT No. 130 of 3.6.2011/7.9.2013 before the Additional District Judge, Ferozepur.

The ADJ *vide* Judgment & Order dated 13.01.2014 dismissed the Appeal. The Appellate Court held that the two Sale Deeds dated 01.09.1999 were executed without any consideration as per the admission of Dharam Singh, and Respondent No. 1 in their statements recorded by the Collector, Ferozepur.

In the absence of any legal necessity, or benefit to the estate of the joint Hindu family, the Sale Deeds dated 01.09.1999 were illegal, null and void.

2.12. Aggrieved by the aforesaid Order, Respondent Nos. 1, 2 & 3 filed RSA No. 1354 of 2014 before the Punjab & Haryana High Court.

2.13. During the pendency of the Regular Second Appeal before the High Court, Dharam Singh expired on 05.01.2017.

2.14. The High Court *vide* the impugned Judgment & Order dated 13.11.2018, allowed the RSA filed by the Respondents, and set aside the concurrent findings of the courts below.

The High Court held that (i) the Appellant had no locus to institute the Suit, since the coparcenary property ceased to exist after Inder Singh partitioned the property between his 3 sons in 1964; (ii) the Appellant had no right to challenge the Sale Deeds executed on 01.09.1999 on the ground that the sale consideration had not been paid, since only the executant of the Sale Deeds *viz*. Dharam Singh (Defendant No. 1) could have made such a challenge; and (iii) Jamabandis for the years 1957 – 58 till 1970 – 71 were not produced by the Appellant.

2.15. Aggrieved by the impugned Judgment & Order dated 13.11.2018 passed by the High Court, the Appellant has filed the present Civil Appeal.

A 3. We have heard learned Counsel for the parties, and perused the pleadings and written submissions filed by the parties.

4. Mr. Manoj Swarup, Senior Counsel appearing on behalf of the Appellant, submitted that the suit property was coparcenary property in which the Appellant had become a coparcener by birth.

B It was further submitted that since the suit property was coparcenary property, Dharam Singh could not have alienated it without legal necessity of the family, or benefit to the estate.

It was further submitted that the Sale Deed dated 30.10.2007 purportedly executed by Respondent No. 1 in favour of Respondent C Nos. 2 & 3, during the pendency of the Suit, was hit by *lis pendens*. Hence, it was illegal, null and void.

5. Mr. Ritin Rai, Senior Counsel appearing for the Respondents submitted that the Civil Suit was filed by the Appellant in collusion with his father Dharam Singh (Defendant No. 1), as Dharam Singh's marriage D with Respondent No. 1 had fallen apart, and had subsequently been dissolved through a decree of divorce on 15.12.2010. It was contended that the Civil Suit was filed by the Appellant at the behest of his father Dharam Singh.

It was further submitted that the suit property was not coparcenary E property when the two Sale Deeds were executed on 01.09.1999. Inder Singh's property ceased to be coparcenary property after it was divided *vide* the decree dated 04.11.1964. Reliance was placed on the decision of this Court in *Uttam* v. *Saubhag Singh*,[1] wherein it was held that:

F *"18. 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*

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H [1] (2016) 4 SCC 68

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:

...

(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."

It was further submitted that the Appellant had no *locus* to file the Civil Suit on the ground that no sale consideration was paid by Respondent No. 1 to Dharam Singh. The Appellant was not a party to the Sale Deeds, and only the executant of the Sale Deeds *viz*. Dharam Singh, could have filed such a suit.

6. The issues that arise for consideration before us are two-fold: (i) whether the suit property was coparcenary property or self-acquired property of Dharam Singh; (ii) the validity of the Sale Deeds executed on 01.09.1999 by Dharam Singh in favour of Respondent No. 1, and the subsequent Sale Deed dated 30.10.2007 executed by Respondent No. 1 in favour of Respondent Nos. 2 & 3.

7. With respect to the first issue, it is the admitted position that Inder Singh had inherited the entire suit property from his father Lal Singh upon his death. As per the Mutation Entry dated 16.01.1956 produced by Respondent No. 1, Lal Singh's death took place in 1951. Therefore, the succession in this case opened in 1951 prior to the commencement of the Hindu Succession Act, 1956 when Inder Singh succeeded to his father Lal's Singh's property in accordance with the old Hindu *Mitakshara* law.

7.1. Mulla in his commentary on Hindu Law (22nd Edition) has stated the position with respect to succession under *Mitakshara* law as follows:

Page 129

"A son, a grandson whose father is dead, and a great-grandson whose father and grandfather are both dead,

A *succeed simultaneously as single heir to the separate or self-acquired property of the deceased with rights of survivorship."*

Page 327

B *"All property inherited by a male Hindu from his father, father's father or father's father's father, is 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*

C *property at the moment of their birth.*

A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son's sons, and son's son's sons, but as regards other relations, he holds it, and is

D *entitled to hold it as his absolute property."*

(emphasis supplied)

7.2. In *Shyam Narayan Prasad* v. *Krisha Prasad & Ors.*,[2] this Court has recently held that :

E *"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*

F *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*

G *the natural or adopted son of that son will take interest in it and is entitled to it by survivorship."*

(emphasis supplied)

H [2] (2018) 7 SCC 646

7.3. Under *Mitakshara* law, whenever a male ancestor inherits any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him, would get an equal right as coparceners in that property.

7.4. In *Yudhishter* v. *Ashok Kumar*,[3] this Court held that :

"11. This question has been considered by this Court in Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors. [1986] 161 ITR 370 (SC) where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Kar of his own undivided family but takes it in his individual capacity."

(emphasis supplied)

7.5. After the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post – 1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired property, and does not remain coparcenary property.

7.6. If succession opened under the old Hindu law, i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by *Mitakshara* law. The property

[3] (1987) 1 SCC 204

A inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-à-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.

B 7.7. In the present case, the succession opened in 1951 on the death of Lal Singh. The nature of the property inherited by his son Inder Singh was coparcenary in nature. Even though Inder Singh had effected a partition of the coparcenary property amongst his sons in 1964, the nature of the property inherited by Inder Singh's sons would remain as coparcenary C property *qua* their male descendants upto three degrees below them.

7.8. The judgment in *Uttam* v. *Saubhag Singh (supra)* relied upon by the Respondents is not applicable to the facts of the present case. In *Uttam*, the appellant therein was D claiming a share in the coparcenary property of his grandfather, who had died in 1973 before the appellant was born. The succession opened in 1973 after the Hindu Succession Act, 1956 came into force.

The Court was concerned with the share of the E appellant's grandfather in the ancestral property, and the impact of Section 8 of the Hindu Succession Act, 1956. In light of these facts, this Court held that after property is distributed in accordance with Section 8 of the Hindu Succession Act, 1956, such property ceases to be joint family F property in the hands of the various persons who have succeeded to it. It was therefore held that the appellant was not a coparcener vis-à-vis the share of his grandfather.

7.9. In the present case, the entire property of Lal Singh was inherited by his son Inder Singh as coparcenary property G prior to 1956. This coparcenary property was partitioned between the three sons of Inder Singh by the court *vide* a decree of partition dated 04.11.1964. The shares allotted in partition to the coparceners, continued to remain coparcenary property in their hands *qua* their male

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descendants. As a consequence, the property allotted to Dharam Singh in partition continued to remain coparcenary property *qua* the Appellant.

7.10. With respect to the devolution of a share acquired on partition, Mulla on Hindu Law (22nd Edition) states the following:

"§ 339. Devolution of share acquired on partition. – The effect of a partition is to dissolve the coparcenary, with the result, that the separating members thenceforth hold their respective shares as their separate property, and the share of each member will pass on his death to his heirs. However, if a member while separating from his other coparceners continues joint with his own male issue, the share allotted to him on partition, will in his hands, retain the character of a coparcenary property as regards the male issue [§ 221, sub-§ (4)]."

(emphasis supplied)

7.11. This Court in *Valliammai Achi* v. *Nagappa Chettiar and Ors.*,[4] held that:

"10. ... It is well settled that the share which a co-sharer obtains on partition of ancestral property is ancestral property as regards his male issues. They take an interest in it by birth whether they are in existence at the time of partition or are born subsequently: [see Hindu Law by Mulla, Thirteenth Edition p. 249, para 223 (2)(4)]. If that is so and the character of the ancestral property does not change so far as sons are concerned even after partition, we fail to see how that character can change merely because the father makes a will by which he gives the residue of the joint family property (after making certain bequests) to the son."

(emphasis supplied)

7.12. The suit property which came to the share of late Dharam Singh through partition, remained coparcenary property *qua* his son – the Appellant herein, who became a coparcener in the suit property on his birth i.e. on 22.08.1985.

[4] AIR 1967 SC 1153

A Dharam Singh purportedly executed the two Sale Deeds on 01.09.1999 in favour of Respondent No. 1 after the Appellant became a coparcener in the suit property.

8. The second issue which has arisen for consideration is whether the two Sale Deeds dated 01.09.1999 executed by Dharam Singh in B favour of Respondent No. 1, were valid or not.

8.1. It is settled law that the power of a *Karta* to sell coparcenary property is subject to certain restrictions *viz*. the sale should be for legal necessity or for the benefit of the estate.[5] The onus for establishing the existence of legal necessity is on C the alienee.

In *Rani & Anr.* v. *Santa Bala Debnath & Ors.*,[6] this Court held that :

D *"10. Legal necessity to support the sale must however be established by the alienees. Sarala owned the land in dispute as a limited owner. She was competent to dispose of the whole estate in the property for legal necessity or benefit to the estate. In adjusting whether the sale conveys the whole estate, the actual pressure on the estate, the danger to be averted, and the benefit* E *to be conferred upon the estate in the particular instance must be considered. Legal necessity does not mean actual compulsion: it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of providing legal necessity may be discharged by the alienee by proof of actual necessity or by proof* F *that he made proper and bona fide enquires about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity."*

(emphasis supplied)

G 8.2. In the present case, the onus was on the alienee i.e. Respondent No. 1 to prove that there was a legal necessity,

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[5] *Vijay A. Mittal & Ors.* v. *Kulwant Rai (Dead) through LRs & Ors.*, (2019) 3 SCC 520; Mulla on Hindu Law (22nd Edition), Pg. 372.

H [6] (1970) 3 SCC 722.

or benefit to the estate, or that she had made *bona fide* enquiries on the existence of the same.

8.3. Respondent No. 1 has completely failed to discharge the burden of proving that Dharam Singh had executed the two Sale Deeds dated 01.09.1999 in her favour out of legal necessity or for the benefit of the estate. In fact, it has come on record that the Sale Deeds were without any consideration whatsoever.

Dharam Singh had deposed before the Trial Court that he sold the suit property to Respondent No. 1 without any consideration. Respondent No. 1 had also admitted before the Collector, Ferozepur that the Sale Deeds were without consideration.

Hence, the ground of legal necessity or benefit of the estate falls through.

8.4. As a consequence, the Sale Deeds dated 01.09.1999 are hereby cancelled as being illegal, null and void. Dharam Singh could not have sold the coparcenary suit property, in which the Appellant was a coparcener, by the aforesaid alleged Sale Deeds.

9. Since Respondent No. 1 has not obtained a valid and legal title to the suit property through the Sale Deeds dated 01.09.1999, she could not have passed on a better title to Respondent Nos. 2 & 3 either.

The subsequent Sale Deed dated 30.10.2007 executed by Respondent No. 1 in favour of Respondent Nos. 2 & 3 is hit by the doctrine of *lis pendens*. The underlying principle of the doctrine of *lis pendens* is that if a property is transferred *pendente lite*, and the transferor is held to have no right or title in that property, the transferee will not have any title to the property.[7] The Sale Deed dated 30.10.2007 executed by Respondent No. 1 in favour of Respondent Nos. 2 & 3 being null and void, is hereby cancelled.

10. The Plaintiff/Appellant being a male coparcener in the suit property, was vitally affected by the purported sale of the suit property by his father Dharam Singh.

[7] *T.G. Ashok Kumar* v. *Govindammal & Ors.*, (2010) 14 SCC 370.

A The Appellant therefore had the locus to file the Suit for a Declaration that the suit property being coparcenary property, could not have been sold by his father Dharam Singh without legal necessity, or for the benefit of the estate.

As a consequence, the Appellant was entitled to move the Court B for a Declaration that the two Sale Deeds dated 01.09.1999 executed by his father Dharam Singh in favour of Respondent No. 1 were illegal, null and void.

10.1. The very fact that the Sale Deeds dated 01.09.1999 were executed without any consideration, would itself show that C the suit property was sold without any legal necessity. Being coparcenary property, it could not have been sold without legal necessity, or for the benefit of the estate.

10.2. The non-production of the *Jamabandis* would make no difference, as it did not affect the title/ownership of the suit D property.

11. In view of the aforesaid discussion on law, the judgment passed by the learned Single Judge of the High Court *vide* the Impugned Order dated 13.11.2018, being contrary to law, is set aside.

The Sale Deeds dated 01.09.1999 bearing Wasika Nos. 1075 and E 1079 executed by Dharam Singh in favour of Respondent No. 1 are hereby cancelled and set aside.

Consequently, the subsequent Sale Deed dated 30.10.2007 executed by Respondent No. 1 in favour of Respondent Nos. 2 & 3 during the pendency of proceedings is illegal, and hereby cancelled and F set aside.

The name of the Appellant is to be recorded in the *Jamabandis* as the owner of the suit property.

The Civil Appeal is allowed in the aforesaid terms. All pending Applications, if any, are accordingly disposed of.

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Ordered accordingly.

Divya Pandey Appeal allowed.