Before M.L. Singhal, J

PRITAM KAUR & OTHERS—*Appellant/Plaintiffs*

versus

SURJIT SINGH & OTHERS—*Respondent/Defendants*

R.S.A. 2399 OF 1999

22nd December, 2000

Code of Civil procedure, 1908—S.100—Hindu Succession Act, 1956—S.8—Principles of Hindu Law by Mulla (16th Edition)—Ss. 213, 214, 217, 218, 220, 221, 223(2) & 227—Coparcenary property—What is—Property inherited through collaterals or females—Nature of such property—Sale of joint Hindu family property—Challenged—Challenge not valid qua property inherited through collaterals or females—Concurrent findings of fact—Finding not supported by evidence—Such finding not binding in regular second appeal.

Held, that, only that portion of the land which fell to Babu Singh from his father alone is ancestral/Joint Hindu family/ coparcenary property. The property devolved upon him through females was to be viewed as his separate property.

(Para 50)

Further held, that finding of fact arrived at concurrently by the two courts below is binding on the High Court in second appeal even if that finding has been arrived at on erroneous appreciation of evidence. But that finding is not binding on this Court if there is no evidence to sustain that finding or that finding is based on gross misappreciation of evidence that it has resulted in grave miscarriage of justice. The finding of the two courts below that the land was sold for consideration and valid legal necessity is not supported by any evidence on record and, therefore, this finding is set aside and the sale is held to be without any consideration and legal necessity

(Paras 52 & 54)

R. K. Battas, Advocate with

Munish Jolly, Advocate for the appellants

S.P. Gupta, Sr., Advocate with

S.L. Bansal, Advocate for the respondents

JUDGMENT

M.L. SINGHAL, J

(1) Vide sale deed dated 12th June, 1986 land measuring 43 bighas 10 biswas situated in the revenue estate of village Ballopur, Tehsil Rajpura was sold by Babu Singh son of Amar Singh of village Ballopur, Tehsil Rajpura in favour of Niranjan Singh, Gurcharan Singh, Mohinder Singh and Jaswant Singh sons of Sadhu Singh for an ostensible consideration of Rs. 1,50,000/-, Joga Singh (dead now) represented by his widow Pritam Kaur, sons Raghbir Singh, Gurbachan Singh, Harcharan Singh, Charanjit Singh, daughters Paramjit Kaur and Balwinder Kaur) and Darbara Singh Sons of Babu Singh filed suit for declaration against Babu Singh (dead) represented by Surjit Singh etc., Niranjan Singh (dead) represented by Surinder Singh etc., Gurcharan Singh, Mohinder Singh and Jaswant Singh sons of Sadhu Singh to the effect that the sale deed dated 12th June, 1986 in respect of land measuring 43 bighas 10 biswas situated in the revenue estate of village, Ballopur, Tehsil Rajpura is illegal, null and void having no effect on their rights of ownership. By way of consequential relief, they sought permanent injunction restraining defendants from dispossessing them or from further alienating the suit land; in the alternative they sought decree for possession in case, plaintiffs are dispossessed during the pendency of the suit or in case the court finds that they are not in possession of the land. It was alleged in the plaint that Joga Singh and Darbara Singh are the sons of Babu Singh. They and Babu Singh are Hindus and are governed by Hindu Law in matters of alienation and succession. Land in suit was ancestral/Joint Hindu family/coparcenary property in the hands of Bubu Singh qua them. They have right in the ancestral/Joint Hindu family/coparcenary property right from the moment of their birth. Babu Singh who is head of the family had no right to transfer, alienate or encumber the land in suit. He was a man of feeble mental capacity. He was very old and he was mentally very weak. He was not in control of his mental faculties. He could be mis-led by any one. Earlier, Surjit Singh and Ranjit Singh who are their brothers got collusive decree against their father on 22nd July, 1985 which was to the prejudice of the right, title and interest of the plaintiffs, when they came to know of that decree dated 22nd July, 1985, they filed suit for declaration, which was lateron withdrawn. That decree was illegal, null and void so far as the rights of the plaintiffs are concerned in the land. Again Babu Singh in connivance with Surjit Singh and Ranjit Singh sons of Babu Singh sold suit land vide sale deed dated 12th June, 1986 in favour of Niranjan Singh etc, which

was without consideration and legal necessity.

(2) Babu Singh-defendant No. 1 contested suit of the plaintiffs. It was denied that they are governed by Hindu Law. They are Kamboj by caste and are governed by custom. It was denied that the land in suit was ancestral/Joint Hindu family/coparcenary property. It was rather his self acquired property. It was denied that the plaintiffs have any right in the land in suit. It was denied that they have right in the land in suit. It was denied that they have right by birth in the land in suit. He sold the land in suit for a consideration of Rs. 1,50,000/-. Sale was for legal necessity. He executed sale deed with the consent of the plaintiffs and his other two sons Surjit Singh and Ranjit Singh. Surjit Singh and Ranjit Singh were present at the time of execution and registration of sale deed. He sold land for payment of debt and for purchasing land elsewhere. He had paid debt and had deposited the amount in the bank and had paid cash amount to all his four sons for purchasing land. He is quite a sober and prudent man. It was denied that his mental faculties are weak. It was denied that he could not act prudently. It was denied that he was very old or that his mental faculties had been affected by old age. Surjit Singh and Ranjit Singh never obtained decree against him. Alleged decree dated 22nd July, 1985 is wrong and illegal. Suit if any filed by the plaintiffs is also wrong and illegal and is liable to be dismissed. Sale deed dated 12th June, 1986 was for a valuable consideration of Rs. 1,50,000/-. Land in suit is not coparcenary property. Injunction suit filed by the plaintiffs was also wrong and illegal and the same was dismissed.

(3) Vendees i.e. Niranjan Singh (dead) represented by Surinder Singh etc., Gurcharn Singh, Mohinder Singh and Jaswant Singh-defendants No. 2 to 5 contested the suit of the plaintiffs. It was denied that the land in suit was ancestral/Joint Hindu family/coparcenary property. It was self acquired property of Babu Singh and he was free to alienate in any manner he liked. It was urged that he had sold the land in suit for legal necessity and for a consideration of Rs. 1,50,000/-. Babu Singh is quite a sober and prudent man. In selling land, he acted quite prudently.Out of the sale consideration of Rs. 1,50,000/- a sum of Rs. 38,800/- was due as mortgage debt, out of which, they have already paid Rs. 9000/- to Jiwa Singh son of Mehar Singh and Rs. 4000/- to Mohan Singh son of Munsha Singh. Remaining sale consideration had been received by Babu Singh at his house. Sale is binding on the plaintiffs and their brothers Surjit Singh and Ranjit Singh. Earlier, suit for injunction filed by the plaintiffs was also dismissed. They were not party to that suit. In the revenue record, Babu Singh was entered as owner of the property. Land in suit was

purchased by them bonafide in good faith for valuable consideration without notice of the alleged decree dated 22nd July, 1985. Joga Singh is not in possession of Khasra Nos. 421/1, 426, 427. As such, suit for declaration is not maintainable.

(4) Land in suit is in possession of the vendees (defendants No. 2 to 5) as owners except the portion which they are still to redeem.

(5) On the pleadings of the parties, the following issues were framed by the trial court :

1. Whether the property in suit is joint Hindu Family/ Coparcenary Property of the plaintiffs and defendant No. 1,?OPP

2. Whether the parties (plaintiffs and defendant No. 1) are governed by custom in matters of alienation and succession? If so, what that custom is? OPD

3. Whether the sale deed dated 12th June, 1986 executed by defendant No. 1 in favour of Niranjan Singh etc defendants No. 2 to 5 is illegal and null and void? OPP

4. Whether the sale deed had been executed for legal necessity? OPD

5. Whether the suit is barred by order 2 rule 2 CPC? OPD

6. Whether the suit is barred under Order 9 Rule 8 CPC? OPD

7. Whether the plaintiffs are estopped from filing the present suit? OPD

8. Whether the suit is bad for non-joinder of necessary parties? OPD

9. Whether the plaintiffs are entitled to declaration prayed for? OPP

10. Whether the plaintiffs are entitled to possession in the alternative? OPP

11. Relief.

(6) Vide order dated 1st February, 1991, Additional Subordinate Judge, Rajpura dismissed the plaintiffs suit in view of his finding that the land in suit was not ancestral/Joint Hindu family/coparcenary property in the hands of Babu Singh qua the plaintiffs and therefore

Babu Singh was free to alienate it in any manner, he wanted. It was also found that the land in suit was sold for valid legal necessity and consideration.

(7) Dis-satisfied with the order of Additional Subordinate Judge, Rajpura dated 1st February, 1991, plaintiffs went in appeal. Appeal was dismissed by Additional District Judge, Patiala vide order dated 3rd February, 1999.

(8) Still not satisfied, plaintiffs have come up in further appeal to this court.

(9) I have heard the learned counsel for the parties and have gone through the record.

(10) In this case, we are concerned with the concepts of Joint Hindu Family, Hindu Coparcenary and Coparcenary property as understood in Hindu Law.

(11) Section 212 of the Principles of Hindu Law by Mulla (16th Edition) states that a Joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughter(s). A daughter ceased to be a member of her father's family on marriage, and becomes a member of her husband's family. The joint and undivided family is the normal condition of Hindu society. An undivided Hindu family is ordinarily joint not only in estate, but also in food and worship. The existence of joint estate is not an essential requisite to constitute a joint family and a family which does not own any property may nevertheless be joint. Where there is joint estate, and the members of the family become separate in estate, the family ceases to be joint. Mere severance in food and worship does not operate as a separation. Possession of joint family property is not a necessary requisite for the constitution of a joint Hindu family. Hindus get a joint family status by birth, and the joint family property is only an adjunct of the joint family.

(12) A joint or undivided Hindu family may consist of a single male member and widows of deceased male members. The property of a joint family does not cease to be joint family property belonging to any such family merely because the family is represented by a single male member (coparcener) who possesses rights which an absolute owner of property may possess. Thus for instance a joint Hindu family may consist of a male Hindu, his wife and his unmarried daughter. It may similarly consist of a male Hindu and the widow of his deceased brother.

It may consist of a male Hindu and his wife. It may even consist of two female members. But there must be atleast two members to constitute it. An unmarried male Hindu on partition does not by himself alone constitute a Hindu undivided family.

(13) The basis of the rule that there need not be atleast two male members to constitute a Hindu undivided family is that the joint family property does not cease to be such simply because of the "temporary reduction of the coparcenary unit to a single individual", the character of the property remains the same. There can be a smaller Hindu undivided family within a larger undivided family.

(14) Section 213 of the Principles of Hindu Law by Mulla (sixteenth edition) states that a Hindu coparcenary is a much narrower body than the joint family. Generally speaking it includes only those persons who aquire by birth an interest in the Joint or coparcenary property. These are the sons, grandsons and great-grandsons of the holder of the joint property for the time being, in other words, the three generations next to the holder in unbroken male descent.

(15) Property inherited by a Hindu from his father, father's father or father's father's father, is ancestral property. Property inherited by him from other relations is his separate property. The essential feature of ancestral property is that if the person inheriting it has sons, grandsons, or great grandsons, they become joint owners-coparceners with him. They become entitled to it by reason of their birth.

Illustrations :

(16) (a)—Prior to the coming into force of the Hindu succession Act, 1956, if A who had a son B inherited property from his father, it became ancestral property in his hands and B become a coparcener with his father. Though A as head of the family was entitled to hold and manage the property, B was entitled to an equal interest with his father A, and to enjoy it in common with him. B could, therefore, restrain his father from alienating it except in the special cases where such alienation was achieved by law and he could enforce partition of it against his father. On his father's death, B took the property by right of survivorship and not by succession.

(17) (b)-It was otherwise however, as to separate property. A person was the absolute owner of the property inherited by him from his brother, uncle etc. His son did not acquire any interest in it by birth and on his death it passed to the son not by survivorship but by

succession. Thus if A inherited property from his brother it was his separate property, and it was absolutely at his disposal. His son B acquired no interest in it by birth and could not claim a partition of it, nor could he restrain A from alienating it. The same rule applied in case of self-acquired property of a Hindu who died prior to the coming into force of the Hindu Succession Act, 1956. It is however, important to note that separate or self-acquired property, once it descends to a male issue of the owner became ancestral in the hands of the male issue who inherited it. Thus if A owned separate or self acquired property it passed on his death to B his son as his heir. But the result of the separation of the doctrine of ancestral property and a son taking interest in it simply by his birth was that if B had a son C, the latter (C) took an interest in it by reason of his birth and became a coparcener with B in respect of the same. C could restrain B from alienating it, and could enforce a partition on it against B. This doctrine has been materially affected by operetion of Section B of the Act of 1956.

(18) Ancestral property is a species of coparcenary property. If a Hindu inherits property from his father, it bacomes ancestral in his hands as regards his son. In such a case it is said that the son becomes a coparcener with the father as regards the property so inherited and the coparcenary consists of the father and the son. But this does not mean that a coparcenary can consist only of a father and his sons. It is not only the sons but also the grandsons and great-grandsons who acquire an interest by birth in the coparcenary property. Thus if A inherits property from his father and he has two sons B and C, they both become coparceners with him as regards the ancestral property. If B has a son D, and C has a son E, the coparcenary will consist of the father, sons and grandsons, namely A,B,C,D and E. If D has a son F, and E has a son G, the coparcenary will cosist of the father, sons, grandsons and great-grandsons.

(19) Section 214 says that the conception of a joint Hindu family constituting a coparcenary is that of a common male ancestor with his lineal descendants in the male line within four degrees counting from and inclusive of such ancestor (or three degrees exclusive of the ancestor). No coparcenary can commence without a common male ancestor, though after his death it may consist of collaterals such brothers, uncles and neghews, cousins, etc. No female can be a coparcener although a female can be a member of joint Hindu family.

(20) Genesis of coparcenary-A coparcenary is created in some such way as the following :

(21) A Hindu male A who has inherited no property at all from his father, grandfather, or great-grandfather, acquires property by his own exertions, A has a son B, B does not take any vested interest in the self-acquired property of A during A's life time, but on A's death he inherits the self-acquired property of A. If B has a son C, C takes a vested interest in the property by reason of his birth, and the property inherited by B from his father A, becomes ancestral property in his (B's) hands and B and C are coparceners as regards the property. If B and C continue joint, and a son D is born to C, he enters the coparcenary by the mere fact of his birth. And if a son E is subsequently born to D, he too becomes a coparcener.

(22) Section 217 says that no female can be a coparcener under the Mitakshara law. Even a wife, though she is entitled to maintenance out of her husband's property and has to that extent an interest in his property, is not her husband's coparcener. Nor is a mother a coparcener with her sons nor a mother-in-law with her daughter-in-law.

(23) Section 218 says that the Mitakshara divides property into two classes, namely, unobstructed heritage and obstructed heritage, Property in which a person acquires an interest by birth is called unobstructed heritage. It is called unobstructed, because the accrual of the right to it is not obstructed by the existence of the owner.

(24) Thus property inherited by a Hindu from his father, father's father, or father's father's father, but not from his maternal grandfather, is unobstructed heritage as regards his own male issue, that is, his son, grandson, and great-grandson. His male issues acquire an interest in it from the moment of their birth. Their right to it arises from the mere fact of their birth in the family, and they become coparceners with their paternal ancestor in such property immediately on their birth. Ancestral property is unobstructed heritage.

(25) Property the right to which accrues not by birth but on the death of the last owner without leaving male issue, is called obstructed heritage. It is called obstructed, because the accrual of the right to it is obstructed by the existence of the owner.

(26) Thus property which devolves on parents, brothers, nephews, uncles etc., upon the death of the last owner, is obstructed heritage. These relations do not take a vested interest in the property by birth. Their right to it arises for the first time on the death of the owner. Until then they have a mere spes successions or a bare chance of succession to the property, contingent upon their surviving the owner.

(27) Unobstructed heritage devolves by survivorship : obstructed heritage, by succession.

(28) A inherits certain property from his brother, A has a son B. The property is obstructed in A's hands, B does not take any interest in it during A's life. After A's death, B will take it as A's heir by succession. The existence of A is an obstruction to the accrual of any rights in the property to B.

(29) Section 220 says that property jointly acquired by the members of a joint family with the aid of ancestral property is joint family property, Property jointly acquired by the members of a jont family without the aid of ancestral property may or may not be joint family property, whether it is so or not is a question of fact in each case.

(30) Joint family property may be divided according to the source from which it comes into-

1- ancestral property.

2- separate property of coparceners thrown into the common coparcenary stock

(31) The term "Joint family property" is synonymous with coparcenary property, "Separate" property includes "self acquired" property.

(32) Section 221 says that joint family or coparcenary property is that in which every coparcener has a joint interest and a joint possession. The incidents of a coparcenary property are that (a) it devolves by survivorship, not by succession. This proposition must now be read in the context of sections 6 and 30 of the Hindu Succession Act, 1956, in cases where those sections are applicable (b) It is property in which the male issues of the coparceners acquire an interest by birth.

(33) Section 223 (3) says that property inherited by a person from collaterals, such as a brother, uncle, etc. or property inherited by him from a female, e.g. his mother, is his separate property.

(34) Section 227 says that property which was originally the separate or self-acquired property of a member (coparcener) of a joint family may, by operation of the doctrine of blending, become joint family property, if it has been voluntarily thrown by him into the common stock with the intention of abandoning all separate claims upon it. A

clear intention to waive his separate rights must be established, and it will not be inferred from the mere fact of his allowing the other members of the family to use it conjointly with himself nor from the fact that the income of the separate property was used to support a son not from the mere failure of a member to keep separate accounts of his earnings. So also acts of generosity or kindness should not be construed as admission of legal obligation. Separate property thrown into the common stock in subject to all the incidents of joint family property.

(35) Similarly, where members of a joint family, who have control over the joint estate, bland with that estate, property in which they have separate interests, the effect is that all the property so blended becomes joint family property.

(36) It is thus clear that the property inherited by a Hindu from his father, father's father or father's father's father is coparcenary property. It is an unobstructed heritage in which his sons, grand sons and great-grandsons have an interest the moment they are born. Property inherited by a Hindu from person other than father, father's father or father's father's father is his separate property, in which his sons, grands sons and great-grandsons do not have any interest from their birth. He is free to alienate it in any manner he likes.

(37) We have to determine keeping in view these principles of Hindu Law whether land in suit was or was not ancestral/joint Hindu family/coparcenary property in the hands of Babu Singh *qua* his sons. From excerpt Ex. P-1 it is clear that the land was held by Diwan Singh who was their common ancestor. He had three sons namely Nihal Singh, Chamel Singh and Amar Singh. Nihal Singh died leaving behind his widow Sarbhi, Amar Singh had two sons namely Babu Singh and Rachna. On the death of Amar Singh, Babu Singh and Rachna succeeded to his share of the property. Rachna died leaving behind his daughter Mst. Assi. Gurmail Singh had one son named Chamel Singh with whom we are not concerned.

(38) On the death of Amar Singh, the property of Amar Singh was mutated in the name of Rachna and Babu Singh vide mutation No. 11. This mutation was incorporated in jamabandi for the year, 1964-1965 bikrami. Inheritance of Rachna was mutated in the name of his daughter Mst. Assi. Mst. Assi. married and Assi's share was mutated in the name of her uncle Babu Singh. Similarly, Nihal Singh died leaving behind his widow Sarbhi. Inheritance of Sarbhi was mutated in the name of Gurmukh Singh and Babu Singh. It is apparent from Excerpt Ex. P-1 that land held by Babu Singh did not fall on him

exclusively from his father Amar Singh. Part of the land fell to him on the marriage of Mst. Assi who was his niece. Part of the land fell to him on the death of his aunt Mst. Sarbhi, Property which fell to Babu Singh from his niece or aunt cannot be said to be ancestral/joint, Hindu family/ coparcenary property *qua* his sons. Property inherited by Babu Singh from his aunt and niece was his separate property, in which his sons did not have any interest, so long as Babu Singh was alive. They could only have a chance to succeed to this property and that too if this property remained un-disposed of by Babu Singh. Babu Singh succeeded to the share of his brother Rachna/Mst. Assi daughter of Rachna. Babu Singh succeeded to his uncle Nihal Singh or may be Smt. Sarbhi widow of Nihal Singh. Babu Singh had 1/6th share which had devolved upon him from his father Amar Singh. He succeeded to the other 1/6th share of his brother Rachna which was being held by Rachna's daughter Mst. Assi. Babu Singh succeeded to 1/6th share pertaining to his uncle Nihal Singh/Smt. Sarbhi widow of Nihal Singh while the other 1/6th share pertaining to Nihal Singh/Smt. Sarbhi fell to Gurmukh Singh s/o Chamel Singh.

(39) He (Babu Singh) thus inherited a larger share from Nihal Singh/Sarbhi widow of Nihal Singh and Rachna/Mst. Assi daughter of Rachna *vis-a-vis* the share which had devolved upon him from his father Amar Singh.

(40) Learned counsel for the appellants submitted that the share inherited from Rachna/Mst. Assi (daughter of Rachna) and Nihal Singh /Smt. Sarbhi (widow of Nihal Singh) by Babu Singh should be viewed as coparcenary property as Babu Singh never treated the share inherited like this, any the different from the share inherited by him from his father Amar Singh. There was blending by him of the property inherited by him from his father Amar Singh into the property inherited by him from Rachna/Mst.Assi (daughter of Rachna) and Nihal Singh/ Mst. Sarbhi widow of Nihal Sigh. It was submitted that Smt. Sarbhi succeded to the property on the death of Nihal Sigh as a life estate. On her death in 1981 BK, without any other heir, the land devolved upon Gurmukh Singh and Babu Singh. The land of Rachna came temporarily in the name of his unmarried daughter Assi. In the year, 1980-BK. she was married. As per custom land came to Babu Singh *vide* mutation No. 86 *Ex.* P-4. It was submitted that the land coming from the common ancestor through the widow of Babu Singh's uncle Nihal Singh who at the time of death in 1926 AD held only a life estate and his real brother Rachna cannot be said to be separate property of Babu Singh.

(41) Suffice it to say, the property coming from a collateral or a

female cannot be said to be coparcenary property. Property can be said to be coparcenary only if it is inherited by a Hindu from his father, father's father or father's father's father. Property inherited from any other relation by a Hindu is his separate property in which his sons, grandsons or great-grandsons do not have any interest by birth. They can look to this property only for succession to them on the death of the holder of the property.

(42) There is no evidence that there was conscious blending by Babu Singh of the property inherited by him from his collateral's/females into the property inherited by him from his father and, therefore it cannot be said that there was any blending so that the entire property held by Babu Singh could be viewed as ancestral/joint Hindu family/ coparcenary property.

(43) It was submitted by the learned counsel for the appellants that it is only under custom which would not apply here that if the ancestral and the non-ancestral property is so inextricably mixed up that non-ancestral portion cannot be separated from the ancestral portion, the whole property has to be viewed as non-ancestral property while in Hindu Law, if the coparcenary property and the separate property are so in-extricably mixed up with each other that separate property cannot be separated from the coparcenary property, the whole property has to be viewed as coparcenary property. It was submitted that the parties are Kamboj by caste and they are governed by Hindu Law and therefore Courts below fell in error when they applied the principles of custom according to which if ancestral and non-ancestral lands are so inextricably mixed up with each other that it is not possible to tell what proportion one class of the land bears to the entire holding, and it is also difficult to premise about the valuation of the respective parcels of land which may be regarded as ancestral and non-ancestral, the whole lot is to be considered as non-ancestral. But where the proportion of the non-ancestral or ancestral land is so small as to form a negligible proportion to the other, the entire land may be held to bear the character of the substantial portion.

(44) It was submitted that reliance by the courts below on *Teja Singh and others* vs. *Mst. Bishan Kaur and others (1) and Mara and others* vs. *Mst. Nikko alias Punjab Kaur and another (2),* was misconceived as the principle of law enuciated there in those judgments was applicable to a case which is governed by custom. In custom, where the lands are so inextricably mixed up with the ancestral and non-

(1) 1961 P.L.R. 875
(2) 1964 C.L.R 292

ancestral portions that they cannot be separated, they must be regarded as non-ancestral unless it is shown which are ancestral and which are not.

(45) In this case the entire property could not be viewed as ancestral/joint Hindu family/coparcenary property because larger share of the property had devolved upon Babu Singh through his collaterals/ females. It lay upon the appellants to prove that the land was ancestral/ joint Hindu family/coparcenary property in the hands of holder Babu Singh, property held by a member of a joint Hindu family is presumed to be non-ancestral.

(46) Onus to prove that it is ancestral/joint Hindu family/ coparcenary property is on the party alleging it to be so.

(47) It would bear repetition that there is a presumption that a Hindu family is joint but there is no presumption that any property held by a member of the joint Hindu family is also joint Hindu family property.

(48) Land held by Babu Singh was inherited by him from three sources i.e. one portion he inherited from his father Amar Singh, one portion belonging to his brother Rachna reverted to him on the marriage of Assi daughter of Rachna and the other portion was inherited by him jointly with Gurmukh Singh on the death of Smt. Sarbhi widow of his uncle Nihal Singh. Thus the entire land had not lineally descended to Babu Singh in the male line of descent. Property that came to him from Smt. Assi daughter of Rachna and Smt. Sarbhi widow of Nihal Singh became his separate property. It was held in *Prithi* vs. *Yatinder Kumar and others (3),* that the property inherited by a coparcener from collaterals is his separate property. Similarly it was held in *Babu son of Chet Ram* vs. *Basakha Singh and others (4),* that the property which is held by the common ancestor and comes down by descent to his heirs is ancestral property and all other properties are non-ancestral.

(49) Faced with this position, learned counsel for the appellants submitted that Surjit Singh and Ranjit Singh sons of Babu Singh had filed suit against Babu Singh (Civil) Suit No. 94 dated 30th January, 1985) for declaration that they are owners in possession in equal shares of agricultural land measuring 26 bighas 6 biswas situated in the revenue estate of village, Ballopur per jamabandi for the year, 1978-1979 on the allegations that they are sons of Babu Singh and this

(3) AIR 1985 Punjab & Haryana 238
(4) 1995 (3) PLR 177

property is ancestral/joint Hindu family/coparcenary property and they are governed by Hindu Law in matters of succession and allienation and a family settlement took place between them and their father Babu Singh about a year ago. At that family settlement this land was given to them by Babu Singh. Babu Singh, when approached with the request to arrange the incorporation of this family settlement in the revenue record refused to accept their genuine demand. As such, they filed this suit. In his written statement, Babu Singh admitted their claim. He admitted that this land was ancestral/joint Hindu family/ coparcenary property qua him and his sons. He also admitted that family settlement had been brought about by him at which this land was given to them by him. He made sttement in the Court admitting their claim. On the basis of written statement filed by him and on the basis of statement made by him in the Court, their suit was decreed. It was submitted that when Babu Singh had admitted the land to be ancestral/joint Hindu family/coparcenary property, there should have been no difficulty in the way of the Courts below holding that this land was ancestral/joint Hindu family/coparcenary property of Babu Singh *qua* his sons.

(50) Suffice it to say, whether the land in suit was or was not ancestral/joint Hindu family/coparcenary property, this fact had to be proved by Joga Singh and Darbara Singh like any other fact against defendants-vendees, Defendants-vendees are not bound by the admission of Babu Singh if any. In this case only that portion of the land which fell to Babu Singh from his father alone is ancestral/joint Hindu family/coparcenary property. Rest was to be viewed as his separate property. Out of this 43 bighas 10 biswas of land, 1/3rd share of Babu Sigh had devolved upon him through inheritance to his father, 1/3rd share had devolved upon him through inheritance to his brother Rachna or his daughter Smt. Assi and 1/3rd share had devolved upon him through inheritance to Smt. Sarbhi widow of Nihal Singh. Thus, only 1/3rd share of land measuring 43 bighas 10 biswas which had devolved upon Babu Singh through inheritance to his father could be said to be ancestral/joint Hindu family/coparcenary property qua him and his sons. *Qua* the remaining 2/9 share of land measuring 43 bighas 10 biswas, sale will go un-challenged as the same has not been challenged by Surjit Singh, Ranjit Singh, Babu Singh and Smt. Bisso.

(51) Learned counsel for the appellants submitted that the land is alleged to have been sold for Rs. 1,50,000/- No payment was made before the Sub Registrar. A sum Rs. 1,11,200/- is said to have been paid to Babu Singh at his house, Rs. 38,000/- is said to have been kept with him as "Amanat" for payment to the mortgagees. There is no proof

that any sum of Rs. 1,11,200/- was paid to Babu Singh at his residence. There is no proof that there was encumbrance on the land in the sum of Rs. 38,800/-, which compelled Babu Singh to sell the land measuring 43 bighas 10 biswas. Sale of such a big chunk of land for performing nanak chhak cannot be viewed as legal necessity. Sale of a small piece of land for performing nanak chhak may be viewed as legal necessity. It is also no legal necessity to sell such a big chunk of land with a view to discharge encumbrance of Rs. 38,800/-. Arjan Singh DW-10 has stated that the bargain for sale had been struck 2/3 months before the execution of the sale deed and sale consideration of Rs. 1,11,200/- had been paid at the time when the bargain was struck. No writing was, however, prepared to evidence the payment of such a big amount. Surjit Singh DW-13 has stated that amount was paid in his presence on the same day when the sale deed was executed. He also stated that a sum of Rs. 38,800/- was paid to the mortgagees in cash and the land was got redeemed while case of the defendants-vendees was that amount of Rs. 38,800/- was kept with them as "Amanat" for payment to the mortgagees. There is, thus, no reliable evidence that land was sold for consideration or for legal necessity. Sale of land for purchase of land elsewhere in the circumstances of a particular case may be viewed as legal necessity. In this case, however, it is not proved why land was to be purchased elsewhere and this land was to be sold. There is no evidence that there was in contemplation of Babu Singh any land which he was to purchase with the sale proceeds of this land.

(52) The finding of the two courts below that the land was sold for consideration and valid legal necessity is not supported by any evidence on record. This finding is based on no evidence and therefore this finding is set aside and the sale is held to be without any consideration and legal necessity.

(53) Learned counsel for the respondents submitted that both the courts below have concurrently found aginst the appellants on fact. Finding of fact arrived at concurrently by the two courts below is binding on this Court in second appeal.

(54) It is true that finding of fact arrived at concurrently by the two courts below is binding on the High Court in second appeal, provided that finding is based on evidence. Even if that finding has been arrived at on erroneous appreciation of evidence, that finding is binding on this Court but that finding is not binding on this Court if there is no evidence to sustain that finding or that finding is based on gross mis-appreciation of evidence that it has resulted in grave mis-carriage of justice.

(55) It was held in *Ratanlal Bansi Lal* vs. *Kishori Lal Goenka (5),* by the Calcutta High Court that Section 100 CPC as amended in 1976 does not impose blanket restrictions against re-appreciation of evidence where the finding of fact by first Appellate Court is perverse, inadequate and violative of natural justice. As a matter of fact there is no precedent to draw upon in support of the proposition that in the wake of the amendment, no appeal could lie from an order on the ground that inferences have been drawn on no evidence or on assumptions and surmises or on evidence on which no reasonable man could draw such inferences or has been drawn by erroneous application of law which is otherwise well settled.

(56) It was held in *S. Nagaraj & others* vs. *State of Karnataka and another (6),* that justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to any one.

(57) It was held in *M/s Variety Emporium* vs. *V.R.M. Mohd. Ibrahim (7),* that concurrent findings of lower courts has relevance on the question whether Supreme Court should exercise its jurisdiction under Article 136 of the Constitution to reverse a particular decision. That jurisdiction has to be exercised sparingly. But, that cannot mean that injustice must be perpetuated because it has been done two or three times in a case. The burden of showing that a concurrent decision of two or more courts or Tribunals is manifestly unjust lies on the appellant. But once the burden is discharged, it is not only the right but the duty of Supreme Court to remedy the injustice.

(58) It was held in *Bagga Singh* vs. *Financial commissioner (8),* that there is no impedimen maintainability of the second appeal in High Court under Sections 100/101 of the Code of Civil Procedure in view of Section 41(1) (c) of Punjab Courts Act where the impugned judgment is based upon no evidence. Finding of first appellate Court being based upon no documentary evidence and in violation of legal procedure, interference in second appeal by High Court held to be justified.

(59) It is thus clear that if there is no evidence to sustain the concurrent finding of fact or the concurrent finding has been arrived at by gross mis-appreciation of evidence that grave injustice has

(5) 1993 (2) RRR 454
(6) JT 1993 (4) SC 27
(7) AIR 1985 SC 207
(8) 1997 HRR 627

resulted, such concurrent finding of fact is not binding on the High Court in second appeal. High Court has the right, rather the duty to set aside such concurrent finding and do justice. Courts of law after all are duty bound to do justice. If they fail to do justice, their will be erosion in the efficacy of the edifice on which the system rests.

(60) For the reasons given above, I am of the opinion that the plaintiffs do not have any case so far as challenge to sale *qua* 8/9 (2/9 + 2/3) share of land measuring 43 bighas 10 biswas is concerned. Plaintiffs case, however succeeds in so far as sale relates to 1/9 share of land measuring 43 bighas 10 biswas. So, this appeal partly succeeds and is allowed partly and the plaintiffs-appellants suit is decreed against the defendant is to the effect that sale deed dated 12th June, 1986 shall have no effect on their (plaintiffs) rights respecting 1/9 share of land measuring 43 bighas 10 biswas. By way of consequential relief, decree for permanent injunction is also granted to the plaintiffs-appellants restraining the defendants-respondents from dispossessing them from 1/9 share of land measuring 43 bighas 10 biswas and further restraining them from alienating 1/9 share of land measuring 43 bighas 10 biswas. No costs.

S.C.K.

Before Jawahar Lal Gupta & N.K. Sud, JJ

GURBAKSH SINGH—*Petitioner*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

C.W.P. No. 14453 of 1999

2nd May, 2001

Constitution of India, 1950—Art. 226—Punjab Lokpal Act, 1996—S. 18—Dismissal of complaint against an Ex-state Revenue Minister—Lokpal declining the request for supply of copy of the report—Section 18 of the 1996 Act provides that the proceedings shall be held in camera and that the evidence shall be treated as confidential—The Act does not treat the report as confidential—No specific provision in the Act debarring the complainant from getting a copy of the report / order—Complainant entitled to claim a copy of the report.