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Case Comment: Arshnoor Singh v Harpal Kaur

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ABOUT THE CASE

The case is a landmark case present before Division Bench of Supreme Court of India presided by Justice Indu Malhotra & Justice Uday Umesh Lalit. The appellant side that is Arshnoor Singh was represented by Counsel Manoj Swarup and the respondent side that is Harpal Kaur was represented by Counsel Nitin Rai.

FACTS OF CASE

In order to understand the facts clearly, we need to know about the family structure of the case also the procedural history which has happened throughout the case. Lal Singh can be said to be the common ancestor. Lal Singh had a single child (son) named Inder Singh. Lal Singh passed away in 1951 and all the property was inherited by his only son Inder Singh. Inder Singh had 4 children (3 sons and 1 daughter) named Gurucharan Singh, Dharam Singh, Swaran Singh, and Dharam Kaur. Dharam Singh had a son, Arshnoor Singh, from his 1st wife, who is the appellant in this case. Dharam Singh married again and his 2nd wife named Harpal Kaur who is the respondent in this case. After the death of Lal Singh in 1951 property was inherited by Inder Singh. In 1964 he had partitioned his property between his 3 sons, each

receiving an equal share. Further for Inder Singhs' sustenance 3 sons transferred 1/4th of their property to Inder Singh, this resulted in Inder Singh and his three sons holding 1/the 4th share each in the property. After the expiry of Inder Singh on 15/04/1960 1/4th share was inherited by his sons, daughter, and widow.

Dharam Singh sold the entire property which he received in his share to the respondent through 2 registered sale deeds dated 01/09/1999 for an ostensible amount of Rs 4,87,500. On 21/09/1999 sale deed was sent to the sub-registrar for action u/S 47 of the Indian Stamp Act, 1999 as the sale deeds were undervalued. Dharam Singh and respondent appeared before the collector where he admitted that no consideration had been received against the transfer of property, same was admitted by Harpal Kaur and amount of Rs 4,87,500 was shown for the purpose of registration. And on 20/09/1999 Dharam Singh married the respondent. On 22/08/2003 appellant became a major and on 23/11/2004 instituted a suit, against Dharam Singh, defendant. No.1 Harpal Kaur defendant no.2 (Respondent no.1), for a declaration that these deeds which were executed on 01/09/1999 are null, void, and illegal on the grounds that the suit property was co-parcenary property, he also prayed for a permanent injunction against respondent no. 1 from transferring or alienating or creating a charge on the suit property.

During the pendency of suit respondent, no.1 sold the property to respondent no. 2 & 3 Kulwant Singh and Sang Bahadur respectively through a sale deed dated 30/10/2007. An application was disposed of off with liberty granted to respondent no.1 to defend the rights as she had imploded to include respondents no 2 & 3 as co-defendants. Dharam Singh in his deposition submitted that no consideration was paid as it was a condition for pre-text of marriage. The trial court held the decision in favor of the appellant stating that respondent no.1 failed to prove that the suit property was sold by Dharam Singh for the legal necessity of family or for benefit of the estate. Hence the said transaction was said to be illegal, null, void and the appellant had joint possession of the suit property. Respondent no. 1 along with respondents no 2 & 3 filed a civil appeal before Additional District Judge Ferozpur. The appeal was dismissed vide order dated 13/01/2014 stating that the 2 sale deed was executed without

any consideration and same which was admitted by Dharam Singh as well as respondent no. 1. And as the sale deed was executed in absence of legal necessity or estate benefit of joint Hindu Family and hence the said sale deed were illegal, null and void.

Aggrieved by the order given by Additional District Judge of Ferozpur respondent no.1 filed the case before Punjab & Haryana High Court. During the pendency of the case, Dharam Singh expired on 05/01/2017. The High Court gave the order in favor of respondent no.1 stating that the appellant had no locus in instituting the case as after the partition done by Inder Singh the property ceased to be a coparcenary property. Secondly appellant could not file the case because the transaction of the sale deed was between late Dharam Singh and respondent no.1 and the issue of consideration not being paid could only be challenged by late Dharam Singh. Lastly, the Jamabandis for the years 1957 – 58 till 1970 – 71 were not produced by the Appellant before the court. Aggrieved by the impugned judgement given by the Hon'ble High Court appellant filed the present case before the Supreme Court of India.

ISSUE PRESENT BEFORE THE COURT

- Whether the suit property was coparcenary property or self-acquired property of Dharam Singh?
- The validity of the Sale Deeds executed on 01.09.1999 by Dharam Singh in favor of Respondent No. 1, and the subsequent Sale Deed dated 30.10.2007 executed by Respondent No. 1 in favor of Respondent Nos. 2 & 3.

ARGUMENTS FROM THE APPELLANT'S SIDE

- The suit property was a coparcenary property wherein the appellant had right over coparcenary property by birth.
- As the property was coparcenary property it cannot be sold or alienated until and unless there was some kind of legal necessity to the family or benefit to the estate.

- The sale deed which was executed by respondent no.1 in favor of respondents no.2 & 3 on 30/10/2007 was illegal, null, and void as already case was going on and hence the transaction was hit by lis pendens.

ARGUMENTS FROM THE SIDE OF RESPONDENT

- It was contended that the marriage between Dharam Singh and respondent had been dissolved on 15/12/2010 and the current suit has been filed on the behest of Dharam Singh.
- It was argued that the suit property was not a coparcenary property as after the partition on 04/11/2014 the property ceased to be a coparcenary property.
- Heavy reliance was placed on the *Uttam v Sawbhag Singh 2016* starting that “On a conjoint reading of Sections 4, 8 and 19 of the Act after the 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 argued that the appellant had no locus to institute the case on the grounds that no consideration was paid as he was not a party to the sale deed and such an issuer could have been raised by the party to the sales deed, i.e., Dharam Singh.

JUDGEMENT

Firstly it was agreed by the judges that the succession case was opened before 1951, as per the mutation entry dated 16/01/1956 Lal Singh's death took place in 1951, before the commencement of the Hindu Succession Act 1956¹, and hence Inder Singh succeeded his father's property i.e Lal Singh through or in accordance with Hindu Mitakshara Law. In order to understand the succession in the backdrop of Hindu Mitakshara Law, books and cases were referred. In the book of Mulla, it was emphasized that “The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons, and greatgrandsons of the person who inherits

¹ Hindu Succession Act, 1956

it, acquire an interest, and the rights attached to such 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 entitled to hold it as his absolute property." Basically, it tells about the nature of the ancestral property and who can inherit and develop an interest over it, i.e., son, grandson, and great-grandson, and whoever holds it in this capacity becomes a coparcenary by birth and has absolute right over the property. Emphasis was given on the case ***Shyam Narayan Prasad v Krishna Prasad & Ors.***² 2018 where it stated that *"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 the natural or adopted son of that son will take interest in it and is entitled to it by survivorship."* It states that after the partition of ancestral property the share which copartner receives is of ancestral property and it will remain ancestral property in the hands of coparcener son and his son whether adopted or natural will be entitled to it through the doctrine of survivorship.

In the case of ***Yudhishter v Ashok Kumar***³ stated 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 8⁴ 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 Karta of his own undivided family but takes it in his individual capacity."* It means that the right of coparcenary accrues from the moment of birth and the child gets shares in his father's property. Usually, it happens that from whatever source father inherits property the son will have a share in the property as a part of Joint Hindu Family,

² *Shyam Narayan Prasad v Krishna Prasad & Ors* 2018

³ *Yudhishter v Ashok Kumar* 1987 AIR 558

⁴ Hindu Succession Act, 1956, s 8

such position was changed after the introduction of *Section 8 of Hindu Succession Act 1956* son inherits the property in the capacity as of an individual and not as of undivided family.

After enactment of the Hindu Succession Act 1956 if a male acquires self-acquired property and when his son is born he inherits the self-acquired property as self-acquired property and the property does not remain as coparcenary property. Earlier before the act position was different people were governed by Mitakshara Law where a male Hindu will be coparcenary in property and also 3 generations will be coparcenary to the property and nature of such property will remain coparcenary even after the commencement of Hindu Succession Act 1956. If we apply this to our present case it can be seen that the suit property is of coparcenary in nature where the appellant is a coparcenary as the property was inherited by Inder Singh, in the year 1951 that is before the Hindu Succession Act 1956, as a coparcenary and hence three male lineal decedents are coparcenary. Though partition was effected in 1964 but property was inherited by Inder Singh as coparcener. The court quashed the point of case reared by the respondent of Uttam Singh stating that this case does not apply in this scenario because such property ceases to be joint family 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.

Hence regarding the first issue, it can be said that the property which had been divided by Inder Singh between his sons or coparcener continues to be a coparcenary property up to 3 male veinal decedents. So it boils down to the fact that the property allowed to Dharam Singh is coparcenary property. The second issuer deals with the 2 sale deeds which had been executed in favor of respondents no2 & 3 are valid or not. Emphasizing the case of *Rani & Anr. v Santa Bala Debnath & Ors*⁵ the court observed that Karta can sell the property but on valid grounds that is a legal necessity. Hence in this case it was the responsibility of respondent no.1 to prove that heh sale was because of legal necessity or benefit of the estate. But respondent no. had failed in proving this moreover it had been said in front of collector that the no consideration had been paid for the 2 sale deeds. Hence the sale deed can be said to

⁵ *Rani & Anr. v Santa Bala Debnath & Ors* 1971 AIR 1028

be illegal, null, and void. Since the respondent has not obtained a legal and valid title the transfer of property itself becomes false and baseless. Moreover, the transfer of property is also hit by maximum lis pendens. Hence based upon the above reasoning it can be concluded that the property which Dhran Singh had inherited was in that capacity of the coparcenary and respondent no.1 had no right over it due to which the execution sale deed on 01/09/1999 is false and baseless. Therefore civil appeal is allowed.

ANALYSIS: AUTHOR'S OPINION

The judgment of the case was clearly according to law and I do also agree with the judgement given by honorable judges of the court but what it lacked they never mentioned the jurisprudence behind the decision, many people may blindly follow the judgement without giving a second thought jurisprudence. A rationale is very important to know the reasoning behind the judgement. From the above cited things, it is clearly understandable that the main essence of the case was how to differentiate between ancestral and separate property, and adding to it was the concept of legal necessity and benefit to the estate.

When a Hindu receives property from his father or grandfather or great grandfather it is ancestral property, and when earning his own property through other modes of the transaction rather than inheritance it is separate property. It can be understood from the definition itself the nature of ancestral property i.e if a person has a son grandson or great-grandson then the property does not belong to himself only but to three-generation also and hence they are coparcenary to property that also by birth. If related to the present case it means that as soon as Arshnoor Singh became coparcener that is when he was born he was entitled to ancestral property and hence he had the right to restrain his father from alienating it, as the prior interest of Arshnoor Singh was present in the property. And in such a situation Arshnoor Singh acquires property through survivorship and not by succession. But there is the exception to such situations also, i.e., APATKALE, KUTUMBHARTE, DHARAMARTE.

1. **APATAKLE:** Suggesting from the name itself *apatkale* under Mitakshara law is such a situation of distress where Karta has the power to alienate immovable as well as moveable to property in order to avoid or pass through the time of distress.
2. **KUTUMBHARTE:** *Kutumbharte* translates for the sake or wellness of family members. When there is dire situation where family members are distressed such as when there is a shortage of food, clothing or a house may be sold due to debt, or in order to pay the educational or medical expense in such a situation, the Karta has the power to alienate the property.
3. **DHARAMARTE:** *Dharamarte* which in this contextual sense means for indispensable rights and duties of family or basically for pious purposes such as religious or charitable purpose. But in current times this charitable purpose has also been limited. A Karta under the name of charitable purpose cannot alienate his or her whole property, a reasonable proportion can be alienated by him and for this purpose, he does not need to take consent of coparcener But under the colonial regime and after the expiry of Government of India Act 1935⁶ these three exceptions were clubbed under the text of legal necessity.

In the case of separate property, however, a man is the only owner of the property he received from his brother, uncle, or other relatives. His son does not inherit it by birth, and when he dies, it does not pass to him by survivorship, but rather by succession. The other exception is of benefit to the estate. In the case of *Palaniappa v Devasikamony*⁷ benefit to the estate was widely discussed and defined as the preservation of the estate from extinction, the defense against hostile litigation affecting it, the protection of it or portions thereof from injury or deterioration by inundation these and such like things would obviously be benefits. A person can not only be sold when he is distressed or in a defensive position but also when through sale or alienation of property profit can be accrued in mere future and such was elaborated in *Balmukand v Kayla Wait*.⁸

⁶ Government of India, Act, 1935

⁷ *Palaniappa v Devasikamony* (1917) 19 BOMLR 567

⁸ *Balmukand v Kamla Wati* 1964 AIR 1385