

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Regular Second Appeal No.1675 of 1988(O&M)

Date of Decision: December 01, 2015

Avtar Singh

....Appellant

versus

Makhan Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

Present: None for the appellant.

Ms.Deepali Puri, Advocate, for the respondents.

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1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

This regular second appeal appears to have been rendered infructuous for the reasons stated herein-after.

[2] The appellant filed a suit for declaration to the effect that he is owner in possession of land measuring 16 kanal 6 marla fully described in the head-note of the plaint and that his father, namely, defendant No.1 (Makhan Singh) be restrained from alienating the same in favour of defendant Nos.2 & 3.

[3] The appellant claimed that the suit-land was Joint Hindu Family's coparcenary property which came to be inherited by Makhan Singh-defendant No.1 as a Karta of joint Hindu family. The appellant had thus allegedly got a pre-existing right in the suit-land, hence, he sought the declaration and injunction order against his father.

[4] The suit was apparently collusive between the father and son as defendant No.1 admitted the claim of

appellant. Defendant Nos.2 and 3 contested the suit and denied the ancestral character of suit-land. They pointed out that defendant No.1 had entered into an agreement to sell with them and that he had already sold a part of his land-holding measuring 6 kanal 1 marla to one Sucha Singh without any protest.

[5] The parties went on trial on the following issues:-

- “i. Whether the plaintiff is owner in possession of the suit land as alleged in the plaint? OPP.
- i(a) Whether the plaintiff is in possession of the property on the basis of family partition and on the basis of valid registered Will dated 19.03.1984. If so, what is its effect? OPP.
- ii. Whether the plaintiff and defendant No.1 constituted joint Hindu family and suit land is ancestral co-parcenary property of the plaintiff and defendant No.1? OPP.
- iii. Whether the plaintiff has got no locus standi to file the suit? OPP.
- iv. Relief.....”

[6] The trial Court dismissed the suit after holding that the appellant had got no cause of action as no actual alienation had taken place and if there is any sale of land by his father, the appellant could attack such alienation on the ground that the subject-property is a joint Hindu family and co-parcenary property.

[7] The first appeal was also dismissed for the same reason, namely, if the sale takes place, his remedy was to challenge the alienation through a suit for declaration and possession.

[8] Still aggrieved, the appellant came to this Court by way of this regular second appeal. On June 24, 1988, this Court passed an injunction order restraining the respondents from alienating the property in dispute. The said order is still operative.

[9] Counsel for the appellant is not present.

[10] Counsel for the respondents has also got no instructions.

[11] What it appears is that meanwhile respondent Nos.2 & 3 might have filed suit for specific performance based on the 'agreement to sell' and in view of the liberty granted by the courts-below, the appellant might have contested that suit and/or take further legal remedy in accordance with law. If respondent Nos.2 & 3 did not file such a suit so far, it goes without saying that they have prima-facie lost the remedy due to expiry of period of limitation.

[12] In the light of the above-noticed plausible probabilities, the instant appeal, in a way has been rendered infructuous. The same is accordingly dismissed as infructuous. However, if some proceedings have been concluded meanwhile or are pending between the parties, the instant order shall have no bearing on the fate of those decided or pending proceedings and the appellant shall be at liberty to raise his plea in those proceedings. The relief sought in this appeal, in any case, is wholly misconceived as well as premature. The appeal stands dismissed as infructuous.

December 01, 2015

mohinder

[SURYA KANT]
JUDGE