

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 3067 of 2012 (O&M)
Date of decision:- 24.07.2015

Radhey Shyam and ors.

...Appellants

Versus

Ashok Kumar & ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate
for the appellants.

RITU BAHRI J.

Plaintiff-Appellants (for short 'the appellant') are in second appeal against the concurrent finding of fact recorded by both the Courts below whereby the suit of the appellants 'the appellants'), was dismissed.

Appellants filed suit averring that Prema had 1/4th share in the suit land and she died issueless in the year 1978 and her share in the suit land has not been mutated as per Hindu Succession Act. On the basis of forged and illegal sale deed dated 12.07.1960 executed by Laxmi Narain in favour of Ganeshi Lal, he got mutated their share of Prema in his favour vide mutation No. 869 dated 27.07.1977 Ex P14. Vide the aforesaid sale deed Laxmi Narain also sold his 1/4th share in the suit land. Since Prema died in the year 1978, therefore, Laxi Narain had no right to alienate 1/4th share of Prema in the suit land to Ganeshi Lal. Mutation No.

869 dated 27.07.1977 Ex D14 was wrongly sanctioned in favour of Ganeshi Lal as in the sale deed old numbers of the suit land prior to the consolidation were stated.

On notice, defendant No. 1 in his written statement has stated that Laxmi Narain had 1/4th share in the suit land and 1/4th share of Prema devolved on Laxmi Narain. Consequently, 1/2 share of the suit land was purchased by his father Ganeshi Lal in the year 1960 from Laxmi Narain. Prema died much prior to 1978. She had no issue and the mutation inheritance of Prema was rightly sanctioned in favour of Laxmi Narain. Thus, the impugned mutation Ex P14 to P16 are correct and legal. They are owner in possession of the suit land since 1960. They have acquired the ownership by way of adverse possession. The present suit has been filed by the appellants in collusion with the heir of Jai Dayal, as the respondents/defendants have obtained ejectment order against Jai Dayal and the execution proceedings qua ejectment of Jai Dayal is pending in the Court Defendant No. 6 have also stated that Ganeshi Lal was owner of 1/2 share of the suit land since 12.07.1960 and the impugned mutation Ex P14 to P16 are correct and legal. No written statement was filed on behalf of defendant Nos. 18 to 20.

From the pleading of the parties, the trial Court framed the following issues:-

- “1. Whether the parties to the suit are owners in possession to the extent shown in the head note or the plaint? OPP
2. Whether the impugned Mutation No. 869 dated 12.07.1960 is illegal and not binding on the rights of the plaintiff?OPP
3. Whether the impugned Mutation No. 993 regarding inheritance of Ganeshi Lal in favour of defendant Nos. 1 and 2 are not binding on the rights of the plaintiff? OPP
4. Whether the impugned Mutation No. 999 dated 18.12.1982 regarding partition is also illegal and not binding on the rights of the plaintiff? OPP
5. Whether the plaintiff deserved to the relief of injunction? OPP
6. Whether suit is not maintainable in the present form? OPD
7. Whether the plaintiff has no cause of action to file the suit? OPD
8. Whether the plaintiff has no locus standi to file the suit? OPD
9. Whether plaintiff is estopped to file the suit by his own act and conduct? OPD
10. Whether the suit is barred by limitation?

OPD

11. Whether the suit is bad for non joinder and misjoinder of necessary parties? OPD

12. Relief.”

After going through the judgments passed by both the Courts below, from record, it transpires Sheoji Ram had four sons namely Ram Lal, Thana, Hardev and Ramdev. Ramdev had two sons namely Prema and Bansi as is evident from Ex P-18 Laxmi Narayan is son of Bansi. The sale deed dated 12.07.1960 in question is executed by Laxmi Narayan in favour of Ganeshi Lal father of contesting respondents/defendant Nos. 1 to 3 in respect of 1/4th share of Prema in the suit land claiming him to be successor of Prema. The present suit has been filed by successors-in-interest of Ram Lal, one of the son of Sheoji Ram claiming that 1/4th share of Prema son of Hardev who died issueless, should be equally divided between the sons of Sheoji Ram i.e Ram Lal, Thana, Ramdev. It is alleged that Prema died in the year 1978, therefore, the sale deed dated 12.07.1960 executed by Laxmi Narayan claiming his right through Prema is illegal, null and void.

Both the Courts below dismissed the suit of the appellants on the ground that there is no documentary record to show as to when Prema died, as the appellants failed to produce any death certificate of Prema or any other

proof of death in the year 1978. Further the sale deed dated 12.07.1960 was a registered document and merely because in Jamabandi Ex P9, Prema had been shown as owner of 1/4th share land in the suit land, it cannot be said that he continued as owner. Further the sale deed made by Laxmi Narayan in favour of Ganeshi Lal cannot be set aside because Laxmi Narayan has been arrayed merely as proforma defendant No. 17 and not as a contesting respondent and once no relief has been claimed against Laxmi Narayan, no relief can be granted against Ganeshi Lal who was merely a vendee. Further the challenge to the sale deed was made after a period of 40 years and hence it was held to be barred by limitation.

The judgments passed by both the Courts below dismissing the suit of the appellants on the ground of limitation as well as in the absence of any evidence, does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

July 24, 2015
G Arora

(RITU BAHRI)
JUDGE