

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 336 of 2012 (O&M)
Date of decision: 30.7.2015

Bhupinder Singh and others

.. Appellants

v.

Baljit Kaur and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Vaneet Soni, Advocate for the appellants.
Mr. R.P. Singh Ahluwalia, Advocate for respondents No. 1 & 2
Mr. Jagdish Bector, Advocate for respondent No. 4.
Mr. Anil Kumar Gahlawat, Advocate for respondents
No. 7 and 8.

...

Rajesh Bindal J.

The plaintiffs are before this court against concurrent findings of fact recorded by both the courts below, whereby the suit filed by them for declaration, permanent and mandatory injunction, was dismissed.

Brief facts, as are available on record, are that the appellant-plaintiff-Bhupinder Singh is son of Sarwan Singh from Gurdev Kaur (deceased). Besides appellant-Bhupinder Singh, Sarwan Singh had two daughters, namely, Sukhwinder Kaur and Surinder Kaur. After the death of Gurdev Kaur, Sarwan Singh re-married with respondent No. 1-Baljit Kaur on 15.8.1981. Respondent No. 2-Gurmeet Kaur was born to Baljit Kaur from the lions of Sarwan Singh on 1.1.1983. The property in dispute, namely, plot No. 1469, Sector 21, Panchkula was allotted to Sarwan Singh. He died intestate on 6.10.1999. The appellants were married by Sarwan Singh during his life time. After the death of Sarwan Singh, application was

moved by Baljit Kaur before Haryana Urban Development Authority for transfer of ownership of the plot in her name. Re-allotment letter was issued on 7.1.2003, which was challenged by the appellants-plaintiffs by filing the suit in question on 22.2.2006. Respondents No. 1 and 2, namely, Baljit Kaur and Gurmeet Kaur are step mother and step sister of the appellants, respectively. The suit was dismissed by the trial court. The judgment and decree of the trial court was upheld in appeal.

Learned counsel for the appellants submitted that before the death of their father-Sarwan Singh, there was family understanding that his property shall be divided amongst all the legal heirs. To give due regard to the eldest member of the family, i.e., respondent No. 1, son and daughters had given their affidavits for transfer of the house in favour of respondent No. 1. The same was not for the purpose of relinquishing their rights, rather, only to keep the property in the name of eldest member of the family. The moment affidavits were furnished, respondent No. 1 started behaving differently. Appellant No. 1 had been living in the house in question with respondent No. 1 from the very beginning. Even he had made contribution for the purpose of construction of the house, hence, the appellants had 1/5th share each in the property, which was declined to them. The courts below have not properly appreciated the evidence placed on record. The findings are perverse.

On the other hand, learned counsel for respondents No. 1 and 2 submitted that Sarwan Singh died on 6.10.1999. The appellants had given affidavits on 26.2.2001 for transfer of the plot in the name of respondent No. 1 before Haryana Urban Development Authority. Re-allotment letter was issued in favour of respondent No. 1 on 7.1.2003. Due intimation thereof was given to all the legal heirs. None had any objection. The affidavits furnished by the appellants have not been produced on record in support of the plea that no objection given by them for transfer of the plot in favour of respondent No. 1 was conditional. The suit was filed on 22.2.2006, i.e., more than three years after the issuance of re-allotment letter. Both the sisters of appellant No. 1, namely, Sukhwinder Kaur and Surinder Kaur had not appeared in the witness-box to support the case. The

other witness produced by the appellant, namely, PW2-Jarnail Singh, maternal uncle of the appellants, also did not support the case, when he stated in his statement that relations of the family were cordial. The step-mother had been taking due care and giving respect to appellants-plaintiffs No. 2 and 3, namely, sisters of appellant No. 1 on all occasions, hence, now to claim that relinquishment of rights by the appellants in favour of respondent No. 1 was not voluntary has no legs to stand.

Heard learned counsel for the parties and perused the paper book.

It is not in dispute that after the death of Sarwan Singh, the appellants had given affidavits on 26.2.2001 having no objection for transfer of their shares in the property in the name of respondent No. 1, their step-mother. Re-allotment letter was issued in favour of respondent No. 1 on 7.1.2003. The suit was filed more than three years thereafter on 22.2.2006. For claiming cause of action, it was pleaded that after the appellants had given affidavits to respondent No. 1, she started abusing appellant No. 1, but the fact remains that after giving affidavit dated 26.2.2001, till such time the suit was filed on 22.2.2006, the appellants did not take any action. Re-allotment letter was issued in favour of respondent No. 1 on 7.1.2003. If there was any such reason, the appellants have not referred to any step being taken by them during this period. It has further come on record that Haryana Urban Development Authority had intimated all the legal heirs after issuance of re-allotment letter on 7.1.2003, still no objection was raised. PW2-Jarnail Singh, in his cross-examination, did not utter a single word regarding misbehave by respondent No. 1, rather, he admitted that whenever plaintiffs No. 2 and 3 visited their parental home, defendant No. 1 had been giving them customary shagun and gifts etc. He further admitted that respondent-defendant No. 1 had brought up the plaintiffs with love and affection. Even appellant No. 1 admitted that arrangement for his marriage was made by respondent No. 1. Plaintiffs No. 2 and 3, namely, sisters of plaintiff No. 1 have not stepped into the witness-box.

With this material on record, in my opinion, there is no error in the judgments and decrees of the courts below. The findings recorded cannot be said to be perverse. No substantial question of law arises in the present appeal. The same is, accordingly, dismissed.

(Rajesh Bindal)
Judge

30.7.2015
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