

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 5164 of 2012 (O&M)
Date of decision: 28.4.2015

Raj Kumar and others

.. Appellants

v.

Gajraj and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sandeep Kumar Yadav, Advocate for the appellants.

...

Rajesh Bindal J.

Challenge in the present appeal is to the judgments and decrees of both the courts below, whereby it was concurrently found that release deeds dated 11.6.2002 and 15.7.2002 executed by Ramdhan in favour of Pyare Lal and Ved Pal were null and void.

It was claimed in the suit filed by respondent No. 1 that Ramdhan had three sons, namely, Gajraj, Pyare Lal and Ved Pal, Ramdhan was co-sharer in the land mentioned in the suit to the extent of 1/3rd share. The property was ancestral coparcenary property and as a result thereof, respondent No. 1 was entitled to share the same. The release deeds executed by Ramdhan in favour of only two sons, namely, Pyare Lal and Ved Pal were bad in law as Ramdhan was not competent to execute the same. The trial court, while declaring the release deeds to be bad, further declared respondent No. 1-plaintiff to be owner of 1/9th share in the property left

behind by Ramdhan, who died on 5.8.2002. The learned lower appellate court partially accepting the appeal filed by the appellants upheld the decree of the trial court only to the extent of declaring the release deeds to be bad, however, left the parties to get the shares determined by impleading all the right holders as party to the litigation.

Impugning the judgments and decrees of the learned courts below, the contention raised was that the courts below have gone wrong in passing the decree as suit for declaration simpliciter was not maintainable without seeking relief of possession. In fact, Gajraj had got entire property of Naurang. He had to share part of the same with Pyare Lal. Both Gajraj and Pyare Lal were married to two daughters of Naurang, who did not have any son, hence, the property inherited from Naurang was to be given to Pyare Lal, for which release deeds were to be executed by Ramdhan in order to compensate his other two sons as Naurang had executed a Will in favour of respondent No. 1-plaintiff regarding the property in dispute.

After hearing learned counsel for the appellants, I do not find any reason to interfere with concurrent findings of fact recorded by both the courts below as far as setting aside the release deeds are concerned. It was not disputed that the property, for which release deeds were executed by Ramdhan, was ancestral, hence, respondent No. 1-plaintiff had a right in that property.

The contention raised that a simpliciter suit for declaration was not maintainable without seeking the relief of possession is also misconceived for the reason that respondent no. 1-plaintiff had merely got the declaration that the release deeds were bad, the same having been executed for the ancestral property. He did not seek relief of partition or possession as all the right holders were not party to the litigation. Under these circumstances, the suit for declaration was maintainable.

Once there was no challenge to the Will executed by late Naurang regarding the property owned by him in favour of respondent No. 1-plaintiff, to raise the contention that the release deeds were executed to compensate the loss of share in the property of Naurang cannot be accepted.

No substantial question of law arises in the present appeal. The

same is, accordingly, dismissed. Consequently, the accompanying applications are also dismissed.

(Rajesh Bindal)
Judge

28.4.2015
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