

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.823 of 2012 (O&M)
Date of Decision: January 22, 2015.**

Manav Sharma and another

.....APPELLANT(s).

VERSUS

Smt. Bimla Devi and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ajay Kumar Kansal, Advocate
for the appellant (s).

Mr. Munish Kumar Garg, Advocate
for respondent No.1.

Respondent-defendant No.2 ex parte
before the lower Court.

SURINDER GUPTA, J.

The appellants filed suit seeking relief as follows:-

“Suit for declaration to the effect that plaintiffs are co-owners in possession alongwith defendant set no.2 in equal shares of the house bounded as under:-

East : 19’6” House of Kanshi Ram,

West : 19’6” Gali

North : 29’3” house of Sh. Devi Dutt,

South : 29’3” shop of Sh. Ram Kumar, and

further restraining the defendant set no.1 from in any way interfering into the peaceful proprietary possession of the plaintiffs over the house in dispute.

The case of the appellants-plaintiffs, in brief, is that the house in

dispute was coparcenary property of the joint Hindu family of which

appellants-plaintiffs and respondent-defendant No.2 were members. Ashok Kumar, respondent-defendant No.2 father of appellants-plaintiffs had inherited this house from his father, as such, it was an ancestral property in which the appellants-plaintiffs had the right from birth. Appellants-plaintiffs and respondent-defendant No.2 are living in the house in dispute as it is the only residential house owned by their joint Hindu family. About a week before filing of the suit on 11.07.2003, respondent-defendant No.1 came to the house of appellants-plaintiffs and threatened to dispossess them on the plea that she had purchased the disputed house from respondent-defendant No.2 who denied the sale of the house in dispute. Respondent-defendant No.1 was requested to show the sale deed which she refused. The appellants-plaintiffs pleaded that respondent-defendant No.2 was not absolute owner of the house in dispute. He is a man of bad habits and slave of intoxicants. The sale deed, if any, executed by him regarding this house, was without any legal necessity, without consideration, illegal, null and void and not binding on the rights of the appellants-plaintiffs.

Respondent-defendant No.1 contested the claim of the appellants-plaintiffs inter-alia pleading that suit is not maintainable as they have not challenged the legality and validity of the registered sale deed No.1784 dated 21.01.2001 executed by respondent-defendant No.2. It was further pleaded that the house in dispute was self acquired property of respondent-defendant No.2, who got the same by way of judgment and decree dated 01.03.1997 passed in civil suit No.511 of 28.11.1996 titled as Virender and others Vs. Ram Bhagat, which was decided in Lok Adalat Camp at Safidon. Ram Bhagat father of defendant No.2 had purchased this house vide registered sale deed No.187 dated 20.07.1950. Respondent-

defendant No.2 required money for his legal necessity i.e. to meet day to day expenses and to run his business in Madhya Pradesh. Respondent-defendant No.1 purchased the disputed house on payment of total sale consideration through her uncle Sham Lal, at the time of registration of the sale deed before the Sub Registrar in the presence of witnesses and is a bona fide purchaser.

The appellants-plaintiffs re-asserted their case in the replication. They denied that the sale deed dated 31.01.2001 was ever executed by respondent-defendant No.2 and termed the same as without consideration, false, fraudulent, forged and fabricated document.

The suit was dismissed by Additional Civil Judge (Senior Division), Jind. Not satisfied, the appellants-plaintiffs filed appeal before Additional District Judge, Jind, which was also dismissed.

On the issue of ancestral nature of the property, the Appellate Court below observed in para 11 of the judgment as follows:-

“The grouse of the plaintiffs/appellants is that the learned trial court has fallen into error while observing that the house in question was not ancestral one while the plaintiffs have been able to prove that the suit property was ancestral property in the hands of Ram Bhagat and as such, Ashok Kumar became owner under the civil court decree from his father, so he could not alienate the property to the exclusion of his sons i.e. plaintiffs. The contention of learned counsel for the appellants is merely a figment or imagination because it is established on the record that Ram Bhagat, father of Ashok Kumar purchased the house in question vide registered sale deed No.187 dated 20.07.1950 and thereafter, in family settlement the property devolved upon Ashok Kumar etc. through civil court dated (sic decree) dated 1.3.1997. There is no dispute on the legal proposition that property becomes ancestral property if the same is inherited

through three descendants (sic ancestors) i.e. father, father's father and father's, father's father. Since the property was alienated by Ashok Kumar, it was to be proved on the file that the same property was inherited by Ashok Kumar from his father, father's father and father's father's father. As per Article 223 of the (sic Mulla on) Hindu Law to prove the ancestral nature of the suit land it is to be proved on the file that the suit land was inherited through three descendants. However, in the case in hand, the plaintiffs have only produced civil court decree on the file. That way, Ashok Kumar, father of the appellants had inherited the house in question from his father, who had purchased the same through registered sale deed in the year 1950. However, this proof alone could not establish the ancestral nature of the suit land. Apart from this, there is no other evidence on the file to prove that the land in the hands of Ram Bhagat was ancestral and thereafter, father of the plaintiffs became owner of the house in question through civil court decree. Our Hon'ble High Court also laid down law in case **Mohinder Kaur Vs. Pargat Singh and others, 2010 (3) Civil Court Cases 72** that if father during his life time had partitioned coparcenary Hindu joint family property and share falling to each of his sons transferred by way of consent decree. The acquisition is, therefore, not by way of inheritance. The property in the hands of defendant became self acquired property and lost the character of joint Hindu coparcenary property. The plaintiffs/appellants, therefore, could not challenge the alienation. Our Hon'ble High Court laid down law in case **Matu Ram (deceased) through LRs Vs. Kartar Singh and others, 2004 PLR 569** that even an admission of the party is not enough to hold the property is ancestral coparcenary as to prove the nature of the property. Court acts only by evidence that may be on the record. Reliance is also placed in case **Gulab Singh Vs. Mam Chand and others, 2009(2) RCR (Civil) 428.**

From the above said discussion, it is abundantly clear that the very substratum of the plaintiffs/appellants that the suit property was ancestral, was found prove otherwise. Once this is the position, the learned trial court has rightly concluded that Ashok Kumar was legally competent to execute and suffer sale deed in favour of Bimla Devi defendant No.1 being land in his hand was self acquired property.”

The plea raised by appellants-plaintiffs in the suit filed by them was two fold:-

- (i) The sale deed was never executed by Ashok Kumar, respondent-defendant No.2 and if execution of sale deed is proved, the same was without consideration, false, fraudulent, forged and fabricated documents;
- (ii) The sale deed by Ashok Kumar, respondent-defendant No.2 is bad as the disputed house was joint Hindu family coparcenary property.

The appellants-plaintiffs have failed on both counts. Neither they could establish that the house in dispute was ancestral/coparcenary property nor any fraud in execution of sale deed by Ashok Kumar respondent-defendant No.2 could be proved.

In this case, the entire sale consideration was paid before the Sub Registrar at the time of registration of the sale deed. There is recital in the sale deed that Ashok Kumar, respondent-defendant No.2 required money for his domestic use and due to this reason, he had agreed to sell the disputed house. The sale deed was executed on 31.01.2001. The suit was filed in July, 2003. In order to make out that plaintiffs were not in touch with Ashok Kumar, their father, PW3 Hema Sharma, wife of respondent-defendant No.2 and mother of plaintiffs had stated that she was not aware as to where her

husband was residing. However, this appears to be in total contradiction of the pleadings. In para 4 of the plaint, the plea of the appellants-plaintiffs is that they are residing in the disputed house with respondent-defendant No.2 Ashok Kumar, their father. It is also alleged that they inquired about the sale deed from Ashok Kumar, who denied the execution of the same. In the plaint, the address of Ashok Kumar and the appellants-plaintiffs is the same. All this is indicative of the collusion of Ashok Kumar, respondent-defendant No.2 in getting the suit filed from the appellants-plaintiffs. When the appellants had knowledge about the sale made by Ashok Kumar, there was no reason for them to avoid mentioning and challenging the sale deed in plaint. No evidence has been produced that Ashok Kumar, respondent-defendant No.2 was a man of bad habits and slave of intoxicants.

Firstly the disputed house was the self acquired property of Ashok Kumar, respondent-defendant No.2. He was competent to sell the same. Ashok Kumar had not come up with any plea of fraud or misrepresentation in the execution of sale deed and plaintiffs being sons of Ashok Kumar, have no locus standi to raise this plea by proxy for Ashok Kumar during his life time. The saving factor for respondent-defendant No.1 is that the entire sale consideration was paid before the Sub Registrar, as such, this plea is not available to the appellants-plaintiffs that the sale deed was without consideration.

Learned counsel for the appellants-plaintiffs, in support of his contentions, has relied upon the observations of Hon'ble Supreme Court in case of *Rohit Chauhan Vs. Surinder Singh and Ors.* 2013(2) *All India Hindu Law Reporter* 558. I have perused this judgment and find that the observations in the above judgment are not applicable to the facts of the

present case. In that case, it was admitted position that the property which the vendor had got in partition was ancestral property while in this case, the property in the hands of father of respondent-defendant No.2 was self acquired property, which he gave to respondent-defendant No.2 and his other sons by way of decree.

On perusal of paper book, judgments of Courts below, pleadings and evidence (copies of which have been made available during the course of arguments by learned counsel for the parties), I find no legal or factual infirmity in the judgment and decree passed by both the Courts below calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

January 22, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE