

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3998 of 2013
Date of decision: 08.10.2015

Tejshawai Narain and another

... Appellants

Versus

Satish Kumar and others

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Dinesh Arora, Advocate for the appellants.

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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was dismissed by the trial court vide judgment and decree dated 17.01.2012. As even the appeal preferred against the said decree failed and was dismissed vide judgment dated 15.12.2012, plaintiffs No.3 & 4 are before this court vide this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiffs, they prayed for a declaration that the sale deed dated 27.04.2007, was wholly illegal and void and not binding on the rights of the plaintiffs. And also for injunction restraining the defendants from causing any interference in their possession over the suit

property, measuring 58 kanals 16 marlas, situated in the revenue estate of village Pehrawar. It was maintained that defendant No.2 was shown to be the owner of the suit property in the jamabandi for the year 2003-04. Though, it was an ancestral and coparcenary property of the plaintiffs as also the defendants. Plaintiffs No.1 & 2 and defendant No.1 happened to be the sons of Nand Kishore and plaintiffs No.3 & 4 were his grandsons (being sons of pre-deceased son of defendant No.2, namely, Jagat Narain). Therefore, plaintiffs as also the defendants were co-owners of the suit property and had a right therein by birth. However, vide sale deed dated 27.04.2007, defendant No.2 sold the suit property i.e. 1/8th share, for a consideration of ₹ 16,68,000/-, in favour of defendant No.1. Defendant No.2 had no right to alienate the suit property. In any case, the alienation was without any legal necessity. Further, as the sale deed dated 27.04.2007, was executed without any consideration, the same was void. As despite repeated requests, defendants failed to acknowledge the claim of the plaintiffs, thus, the suit.

In the written statement filed by defendant No.1, it was denied that the parties to the lis formed a joint Hindu family. Nature of the property being ancestral and coparcenary was also disputed. It was maintained that defendant No.2 was the absolute owner of the suit land. Since, defendant No.2 had spent ₹ 15-20 lacs on the marriage of his daughters, he had

obtained loan from certain private persons. And to repay the loan amount, the suit property was sold to defendant No.1. Possession of the plaintiffs over the suit land was denied.

In a separate written statement filed by defendant No.2, he claimed himself to be the absolute owner of the suit property. It was maintained that he sold the suit property to repay the loan amount, obtained by him for the marriage of his daughters and grand-daughters.

On a due and comprehensive consideration of the matter in issue, and the evidence on record, the courts below concurrently concluded that plaintiffs failed to prove that the suit land was indeed a joint Hindu family ancestral property. No pedigree table was drawn by the plaintiffs in their pleadings to show as to who was their common ancestor and how the property devolved upon defendant No.2 i.e. Nand Kishore. Documents i.e. Ex.P1 copy of mutation No.498, Ex.P2 jamabandi for the year 1909-10, Ex.P3 mutation No.676, were also hardly of any consequence, as the plaintiffs failed to tally the numbers of the properties depicted in these documents with the suit property. Hence, it could not be said that documents Ex.P1 to Ex.P3 relate to the suit property. Burden of proof to prove that the suit land was indeed ancestral and coparcenary in nature was upon the plaintiffs, which they apparently failed to discharge. And, thus, the suit land was

held to be the self-acquired property of defendant No.2. And that being so, he was fully competent to alienate the same.

Learned counsel for the appellants could not point out as to how the conclusions that had concurrently been recorded by both the courts below were either contrary to the position on record or suffered from any material illegality. No other argument was advanced.

In the wake of the position as set above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly dismissed.

October 8, 2015
Rajan

(Arun Palli)
Judge