

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

RSA No.1274 of 2015 (O&M).
Date of Decision: 16.11.2015.

Jai Ram and others

....Appellants.

VERSUS

Jagdish and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Navneet Singh, Advocate for the appellants.

SNEH PRASHAR, J.

1. This was Regular Second Appeal filed by appellants-plaintiffs Jai Ram and others (hereinafter referred to as the “appellants”) impugning the judgment and decree dated 28.09.2012 passed in Civil Suit No.40 of 2007 by learned Additional Civil Judge (Senior Division), Sonapat, dismissing the suit for declaration and permanent injunction filed by appellants against respondents-defendants Jagdish and others (hereinafter referred to as the “respondents”), which was upheld by the first appellate Court vide judgment dated 05.01.2015.

2. The relevant facts are as under:-

In the suit for declaration and permanent injunction filed by the appellants, they pleaded that Brahmi Devi, mother of appellant No.1, mother-in-law of appellant No.2 and grandmother of appellants No.3 to 5, was owner-in-possession of the suit land (detailed in Para No.1 of the plaint). Respondent No.1 Jagdish, being eldest and more educated among his brothers used to deal with all official works of the family. He clandestinely got a decree dated 10.11.1994 passed in his favour from his mother Brahmi Devi. Since the land conveyed under the impugned decree was ancestral and coparcenary property in the hands of Brahmi Devi, she had no right to alienate the same without legal necessity. It was further alleged that the signatures of Brahmi Devi for getting the decree passed were fraudulently obtained on the pretext of giving some surety as she never intended to deprive any of her sons from the family property. No family settlement, as alleged in the pleadings of the suit in which the impugned decree was passed, had ever taken place. Assailing the decree as illegal, null and void, creating no right in favour of respondent Jagdish and submitting that he too could pass no title to the subsequent transferees and also that they had come to know about the impugned decree and the subsequent sale deeds only after the death of Brahmi Devi on 19.11.2005, cancellation of the decree/sale deeds was sought by the plaintiffs.

3. The respondents contested the suit. In the written statement filed by respondent No.1 Jagdish, preliminary objections with regard to maintainability of the suit, locus standi of the appellants, cause of action

and concealment of material facts etc. were raised. He alleged that the impugned decree was passed on 10.11.1994 whereas the suit was filed on 13.02.2007. He also submitted that Brahmi Devi had suffered the impugned decree out of her own sweet will and no fraud was played upon her. The land conveyed under the impugned decree was separate property of Brahmi Devi and she was absolute owner of the same. The decree was in knowledge of all the family members right from the very beginning. Since he used to take care of his mother whereas his brothers never served her, she suffered the decree in his favour. Claiming to have received confirmed title vide the decree, he pleaded that the sale deeds were rightfully executed by him.

Similar stand was taken by respondents No.3 to 6 who claimed to be bonafide purchasers. They also pleaded that the suit land was self acquired property of Brahmi Devi and she had suffered the impugned decree of her own volition.

4. On the rival contentions of the parties, following issues were framed:-

- (1) Whether the decree dated 10.11.1994 subsequent mutation no.1189 and sale deed dated 6.3.1998 and 6.11.1995 and mutation no.1197 and 1202 are illegal, null and void? OPP.
- (2) Whether plaintiff no.1 and plaintiffs no.2 to 5 are jointly entitled to get 1/3rd share each in the suit property? OPP.
- (3) Whether the plaintiffs have no locus standi to file present suit? OPD.
- (4) Whether the plaintiffs have no cause of action to file the present suit? OPD.
- (5) Whether the suit is barred by limitation? OPD.
- (6) Whether the suit of the plaintiff is bad for mis-joinder

and non-joinder of necessary parties? OPD.

(7) Relief.

5. Both the parties adduced evidence in support of their rival contentions.

6. Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court finding that the appellants are not in possession of the suit land and, therefore, their suit for declaration without possession is not maintainable and also that Brahmi Devi was absolute owner of the said property, dismissed the suit of the appellants

7. Appellants preferred an appeal against the judgment and decree dated 28.09.2012 passed by learned trial Court which was dismissed by learned Additional District Judge, Sonapat vide judgment and decree dated 05.01.2015.

8. Feeling aggrieved, the appellants have filed the instant Regular Second Appeal.

9. The submissions made by Mr. Navneet Singh, learned counsel representing the appellants have been considered.

10. It was not a matter in issue that Brahmi Devi was owner of the suit land and she suffered the decree dated 10.11.1994 in favour of her son Jagdish (respondent No.1) and by virtue of the said decree the suit land was transferred in the name of her said son. Appellant Jai Ram is the other son and appellants Smt. Santosh and others are wife and daughters of the third son namely, Ram Chander of Brahmi Devi. The appellants alleged that the

suit land was ancestral/ coparcenary property in the hands of Brahmi Devi and therefore, she could not have alienated the same without legal necessity. It has been mentioned by learned first appellate Court in Para No.17 of his judgment dated 05.01.2015 that appellant No.1 Jai Ram admitted during his statement that the suit land came to Brahmi Devi from her husband who suffered a decree in her favour in the year 1985. Having admitted the fact that Brahmi Devi became owner of the suit land by way of a decree suffered in her favour by her husband, it did not lie in the mouth of the appellants to say that the suit land was ancestral/ coparcenary property in the hands of Brahmi Devi. By virtue of Section 14(1) of the Hindu Succession Act, Brahmi Devi became absolute owner of the suit land by way of the civil court decree passed in her favour.

11. The matter does not end here. Appellant Jai Ram admitted that the impugned decree was suffered by his mother in favour of his brother Jagdish 16 years ago and that a mutation was sanctioned on the basis of the decree. It was further his admission that presently the suit land is owned and possessed by the persons in whose favour it had been alienated by his brother Jagdish by executing registered sale deeds. Once it was admitted by the appellants that the possession of the suit land was with the subsequent purchasers, their simplicitor suit for declaration and permanent injunction challenging the impugned decree dated 10.11.1994 and the subsequent sale deeds dated 06.11.1995 and 06.03.1998 in favour of respondents No.2 to 5 without claiming possession was not maintainable.

12. It may be added that the suit challenging the impugned decree

was filed after lapse of 13 years. Brahmi Devi died in the year 2005. No reason could be explained by the appellants for not challenging the decree during the lifetime of Brahmi Devi. Their plea that they came to know about the decree and the subsequent sale deeds after the death of Brahmi Devi in 2005 is not tenable as according to their own admission the subsequent purchasers are in possession of the suit land on the basis of the sale deeds dated 06.11.1995 and 06.03.1998 executed in their favour. When they could see and it was in their knowledge that the land was no longer in possession of Brahmi Devi or respondent Jagdish, it does not lie in their mouth to say that they were unaware of the decree and the sale deeds executed in favour of the persons in occupation of the suit land. Importantly, it is mentioned in Para No.19 of the judgment of learned first appellate Court that PW2 Santosh (plaintiff No.2) admitted in her cross-examination that during her lifetime Brahmi Devi was asked to challenge the decree and to redistribute the land to her sons in equal proportions, but she refused to oblige them. That by itself is sufficient to prove that the decree and the subsequent sale deeds were in knowledge of the appellants during the lifetime of Brahmi Devi and the same were not outcome of any fraud upon her.

Thus, seen from every angle, there is no merit in the appeal and it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

16.11.2015
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