

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 955 of 2013 (O&M)

Date of decision : August 27, 2015

Madan Mohan

... Appellant

vs.

Ved Parkash and Anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Punchhi, Advocate
for the appellant.

Mr. Rajesh Sethi, Advocate with
Mr. Arun Biriwal, Advocate
for respondent No.1.

Mr. P.K. Ganga, Advocate
for respondent No.2.

Surinder Gupta, J

This regular second appeal has been filed against the concurrent findings of the courts below whereby suit of plaintiff-appellant Madan Mohan, seeking the relief as follows, was dismissed :-

“Suit for declaration to the effect that plaintiff is owner in possession of ½ share of house bearing house tax unit No.4620 (new house tax No.B-16/157) property tax no. B-111-869 measuring 30x60 i.e. 200 sq. yards which is bounded as

East : House of Singla Ji

West : Public Street

North : House of sister Sarla

South : House of Chuni Lal Sehgal

situated at Mohalla Jail ground Sirsa and decree and judgment dated 17.1.05 passed by Shri Jarnail Singh Civil Judge (Junior Division), Sirsa in Civil suit No. 638-C of 2004 titled as Ved Parkash Vs. Smt. Taramani are null and void, against law and facts and passed without jurisdiction and defendant no.1 Ved Parkash obtained the decree in his favour by playing fraud and mis-representation and not binding and

effective upon the rights of plaintiff and said Judgment and decree are liable to be set aside and for permanent injunction restraining the defendants from alienating the house in dispute in any manner forcibly and illegally on the basis of evidence of every description.”

In latter part of judgment, the parties will be referred as the plaintiff and defendant as mentioned in plaint.

The case of plaintiff, in brief, is that the suit property was purchased in the name of Smt. Taramani, his mother, from the funds of Joint Hindu Family. Plaintiff is permanent resident of Kanganpur road, Sirsa while respondent No.2-Smt. Taramani was living with Ved Parkash-defendant No.1 in the disputed house. Defendant No.1 through decree dated 17.1.2005 passed in Civil Suit No.638 of 2004, succeeded in getting the title of the suit property transferred from defendant no.2 in his favour. The defendant no.2 had no right to transfer the whole of the property in the name of defendant no.1 and the decree was collusive.

In the written statement filed by defendant no.1 it was denied that the suit property was purchased from Joint Hindu Family Funds or it constitute the co-parcenary property. This property was self-acquired property of Smt. Taramani and as per provisions of Section 14 of Hindu Succession Act, she was absolute owner of the same. The plaintiff has no locus standi to challenge the decree suffered by her.

In the written statement filed by Smt. Taramani, the claim of plaintiff was admitted but this written statement was later on withdrawn on the application moved by Smt. Taramani to which the plaintiff gave no objection.

Both the courts below discarded the plea of plaintiff that the suit property was joint Hindu family co-parcenary property and dismissed the suit.

Learned counsel for plaintiff/appellant while relying on admission of claim of plaintiff by defendant Taramani has argued that in view of the admission of Smt. Taramani in the written statement, it is proved that the suit property was purchased from joint Hindu family funds and Smt. Taramani was only its *benami* holder for and on behalf of members of joint Hindu family, as such, she could not suffer decree of the entire property in

favour of defendant no.1. He has argued that both the courts below have wrongly ignored the written statement filed by defendant no.2 on the ground that she had later withdrawn it. Once the admission has been made, the same cannot be retracted particularly when the written statement was supported by an affidavit.

Learned counsel for respondents has argued that there was no joint Hindu family in existence at the time of purchase of suit property. Admittedly, the plaintiff-appellant was living separately. The written statement was withdrawn by Smt. Taramani by moving application to which the plaintiff gave no objection, as such, he is estopped from taking the plea that written statement could not be withdrawn. Even otherwise, there is no evidence about the composition of Joint Hindu Co-parcenary Property or about the funds of joint Hindu family with which the suit property was purchased.

The entire case of the plaintiff hinges around the plea that suit property was purchased with the funds of joint Hindu family. However, the plaintiff has not come up with any plea regarding composition of joint Hindu family. It was neither pleaded nor proved by leading any evidence that there existed any funds of joint Hindu family and the suit property was purchased out of those funds. This fact is also not disputed that the plaintiff is living separately from defendants No.1 and 2. Even if it be believed that defendant no.2 has admitted the claim of plaintiff, this admission in no manner operates as estoppel against defendant no.1 or is in itself not sufficient to discard the decree suffered by defendant no.2 in favour of defendant no.1. No evidence has come on record to show that decree suffered by defendant no.2 was the result of fraud, mis-representation or undue influence. As such, the same, even if the admission of defendant no.2 be taken into consideration cannot be held to be illegal.

Perusal of the sale deed dated 1.6.2001 shows that at the time of purchase of suit property father of plaintiff namely Rikhi Ram had already expired. In order to succeed in his plea that the suit property was purchased from joint Hindu family funds the plaintiff was required to come up with specific plea about the composition of family and funds of joint Hindu family. Admittedly, there is no such evidence on record in support of the plea raised by the plaintiff-appellant.

Both the courts below have committed no error of law and fact while reaching the conclusion that the plaintiff has failed to prove that the impugned judgment and decree is the result of fraud, mis-representation etc. In the absence of evidence to the contrary, the suit property vested in defendant no.2 and her title was absolute as its sole owner under Section 14 of Hindu Succession Act.

No substantial question of law requiring determination arises in this appeal.

This appeal has no merits and is dismissed.

(Surinder Gupta)
Judge

August 27, 2015
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