

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1643 of 2014(O&M)
Date of decision :February 26, 2015

Jaspreet Singh

..... Appellant

Versus

Balbir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S. D. Sharma, Senior Advocate with
Mr. Surinder Sharma, Advocate
for the appellant.

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?

Amit Rawal, J (oral).

This Regular Second Appeal at the instance of the appellant-plaintiff is directed against the judgments and decrees of the courts below whereby the suit for permanent injunction seeking that the suit property was ancestral Joint Hindu family and co-parcenary property and thus have interest by birth in the suit property and much less even relief qua injunction restraining the respondents-defendant Nos. 1 to 4 from alienating, mortgaging or disposing of in any manner has been declined.

Mr. S. D. Sharma, learned Senior counsel appearing on behalf of the appellant-plaintiff in support of his grounds

of appeal submits that both the courts below have committed illegality and perversity in dismissing the suit and as well as the appeal without referring to the oral and documentary evidence on record. Had the documentary evidence been examined suit would have been decreed. He further submits that though trial court held that the property in dispute is ancestral property but the trial court relied upon the compromise arrived at between the appellant-plaintiff and respondents-defendants signed by Lakhbir Singh to the effect that all the brothers were sons of Ghamand Singh and would get equal share in the total land measuring 146 bighas. He further submits that other brothers have been given more share whereas the appellant-plaintiff has been given less.

I have heard learned Senior counsel appearing on behalf of the appellant-plaintiff, appraised the impugned judgments and decrees of both the courts below with his able assistance and am of the view that the present appeal is devoid of merits and is liable to be dismissed for the following reasons.

The respondents-defendants in the written statement categorically stated that the suit of the appellant-plaintiff was not maintainable as written compromise in the presence of Village Panchayat and respectables, Lakhbir Singh-defendant No.5 and plaintiffs was written wherein the plaintiff agreed to withdraw the civil suit filed by Lakhbir Singh at Malerkotla and agreed for obtaining the land measuring 15 bighas in the family settlement to the extent of their share subject to minor adjustments from their father Ghumand Singh and the said compromise had been acted upon and in this

regard Ex. D-1, the transfer deed executed in favour of Lakhbir Singh-defendant No.5 and plaintiff had been proved on record. Jaspreet Singh-appellant-plaintiff had appeared as a witness and admitted in the cross examination that all the five brothers got 11 bighas and 11 biswas from his father and his father also transferred the land measuring 15 bighas in favour of his brother and himself in equal share. He further admitted that the compromise affected and the transfer deed is Ex.D-1. In the cross examination he spilled beans by admitting that at the time of filing of the suit on 21.4.2006 he was fully aware that his father had transferred a land measuring 56 bighas 4 biswas in favour of his brother Kulwinder Singh, Kewal Singh and Balbir Singh along with two motors whereas the present suit had been filed in respect of land measuring 118 bighas 3 biswas 10 biswanies, 18 bighas 8 biswas, land measuring 3 bighas 3 biswas 12 biswansies along with house measuring 9 biswas 6,3/4 biswansies. It has come on record that the plaintiff intentionally left the land purchased from joint funds in his name and no evidence has come on record that after joining the service the plaintiff ever contributed in joint funds as he has admitted to have residing at Dhuri.

Once the appellant-plaintiff and Lakhbir Singh have already taken land measuring 37 bighas 13 biswas from the joint property along with other brother by Ghamand Singh in their favour vide two sale deed dated 31.1.2006, the plea of claiming more share on behalf of the appellant-plaintiff no longer survive.

Even the compromise Ex.D-2 had also been proved

on record, much less Ex. D-5 a joint affidavit sworn by appellant-plaintiff and Lakhbir Singh in which they stated that they would take possession of 37 bighas 13 biswas. The plaintiff also admitted the fact that all the five brother got 11 bighas and 11 biswas land each from his father and his father transferred the land measuring 15 bighas in favour of his brother and himself in equal share.

In view of the above, nothing survives in the claim of the appellant-plaintiff as he had been actually compensated and much less no discrimination has been caused by Ghumand Singh between appellant-plaintiff and other brothers.

Both the Courts below have rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 26 , 2015
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