

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

RSA No.2904 OF 2014 (O&M)
DATE OF DECISION : 21st AUGUST, 2015

Sushil Kumar

.... Appellant

Versus

Saroj Bala @ Bala & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Chander Pal Tiwana, Advocate for the appellant.

* * * *

SURINDER GUPTA, J. (ORAL)

1. Heard.
2. The plaintiff appellant filed suit claiming the relief as follows:

“Claim of a decree for possession by way of preferential right to the suit property as per section 22 of Hindu Succession Act on payment of Rs.50,000/- and any other sum which the Hon’ble Court fix and order be passed with costs in favour of the plaintiff and against the defendants.

Detail of suit property.

A residential house consisting of three shops, room, passage, Bath, W.C. stairs on the ground floor and 1st Floor of the portion varanda and dehliz shown red in the site plan.”
3. Case of the plaintiff as emanates from perusal of the plaint is that the suit property was jointly owned by the plaintiff and his brother

Shiv Kumar respondent No.7. Part of the suit property was in possession of defendant-respondent No.7, who had agreed to sell the same to Saroj Bala @ Bala-defendant-respondent No.1 for a sum of ₹50,000/-. On coming to know of this transaction the appellant informed defendant No.1 about his preferential right to purchase the suit property at which she did not get the sale deed executed and sought the refund of the stamp papers purchased by her for the sale deed. However, some documents evidencing the transfer of suit property in favour of defendants No.2 to 6 who are husband and sons of defendant-respondent No.1-Saroj Bala @ Bala, has been got executed.

4. In the written statement it was pleaded that the suit property, which the defendant-respondent No.1 had purchased from Shiv Kumar-defendant No.7 vide sale deed dated 31.07.2007 for a sale consideration of ₹2,00,000/-, had fallen to his share as per the family partition dated 07.06.1982, as such, he was competent to sell the same. Defendant No.1 had purchased the property from defendant No.7.

5. The trial Court observed that defendant No.7 was owner of the suit property after the family partition dated 07.06.1982. The factum of family partition was concealed by the appellant and there was no cogent and convincing evidence on record to prove that the suit property was ancestral.

6. Not satisfied, the appellant preferred the first appeal before the learned Additional District Judge, Kaithal which was also dismissed. It was observed by the appellate Court below; firstly, that the suit property

was not proved to be ancestral property; secondly, vide partition deed dated 07.06.1982 Ex.D-4 the joint property of the parties was partitioned, as such, it was no more joint at the time of the sale and thirdly, that the right conferred under Section 22 of the Hindu Succession Act, 1956 cannot be imposed after the provisions of Section 15 of the Act have been held to be unconstitutional as has been held by the Hon'ble Supreme Court in the case of *Atam Parkash vs. State of Haryana & others* reported as *AIR 1986 (SC), 859* and *Harbir versus Rajpal* reported as *2002(2) RCR (Civil) 341*.

7. Section 22 of the Hindu Succession Act read as follows:

22. Preferential right to acquire property in certain cases.—

(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred. Explanation.—In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

8. In order to attract the provisions of Section 22 of the Hindu Succession Act 1986 it is one of the condition precedent that there must be an existing interest over the immovable property which devolves upon two or more heirs as specified in clause I of the schedule of Hindu Succession Act. In the instant case, it was proved there was already partition of the suit property in the year 1982 as such there was no common interest of the appellant with Shiv Kumar, his brother, at the time of sale of the property by him (Shiv Kumar) vide sale deed dated 31.07.2007.

9. In view of the facts as discussed above, I find no factual or legal infirmity in the judgments of the Courts below calling for any interference. No substantial question of law arises in this appeal for determination. This appeal has no merit and is accordingly dismissed in limine.

21st August, 2015
‘raj’

(SURINDER GUPTA)
JUDGE