

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

RSA No.3749 of 2014(O&M)
Date of decision: 25.02.2015

Sri Krishan

...Appellant

Versus

Prem Chand and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Chanderhas Yadav, 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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was dismissed by the trial court vide judgment and decree dated 20.01.2009. Appeal preferred against the said decree was partly accepted on 30.09.2009. This is how, defendant No.1 is before this court, in 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 they were owners in possession of the disputed plot and the defendants had no concern therewith in any manner. And thus, the sale deed dated 21.07.2004, was illegal, null and void. A decree for injunction was also claimed, restraining the defendants from interfering in possession of the plaintiffs. It was averred that the plaintiffs

happened to be the owners in possession of a plot that was shown in the site plan marked by letters ABEF, for the last 24/25 years, pursuant to a family settlement. It was maintained that defendant No.1 had executed a registered sale deed, in favour of defendant No.2, qua the suit land and thus, the same was illegal and void. As defendants threatened to interfere in the peaceful possession of the plaintiffs over the suit property and refused to acknowledge their claim, thus, the suit.

In defence, it was pleaded, inter alia, that the suit property was ancestral in nature qua plaintiffs and defendant No.1. And since, defendant No.1 had become the owner of the suit land pursuant to a registered will dated 20.07.1988, executed by Sara Devi, widow of Mool Chand, therefore, defendant No.1 had every right to alienate the same. Resultantly, vide a registered sale deed dated 21.07.2004, the suit property was sold by defendant No.1 to defendant No.2. Therefore, defendant No.2 was the owner in possession of the suit land.

Trial court, on a consideration of the matter in issue and the evidence on record, found that nothing was brought on record by the plaintiffs to prove that the sale deed dated 21.07.2004, was indeed a result of fraud and misrepresentation. Defendants, to prove the due and valid execution of the will dated 20.07.1988, had examined Sarup

Singh Yadav, Draftsman, who proved the execution of the will i.e. Ex.DW2/A. The onus to prove, that the sale deed dated 21.07.2004 was null and void, lay upon the plaintiffs, which they apparently failed to discharge. Thus, the sale deed in question was binding upon the rights of the plaintiffs and was not liable to be set aside. Resultantly, the suit was dismissed.

Being aggrieved against the decree, plaintiffs preferred an appeal. First appellate court reviewed the matter in issue, evidence on record and on an analysis thereof, found that plaintiffs No.1 to 3 were sons of Ram Chander son of Mool Chand and plaintiff Devki Devi was widow of Ram Chander. Defendant No.1 i.e. Sri Krishan happened to be the son of Mool Chand. Sri Krishan (DW1) testified in his cross-examination, that they were four brothers, namely, Madadin, Ram Chander, Ram Kishan and defendant No.1 i.e. Sri Krishan. Kewal Singh Saini (PW1), conceded in his cross-examination, that the suit property fell to the share of Mool Chand pursuant to a family settlement and defendant Sri Krishan was his son. Likewise, Krishan Kumar (PW2) also admitted that the suit property was ancestral qua plaintiffs and defendants. The averments set out in para 1 of the plaint showed that the disputed property was ancestral. Even in the written statement filed by defendant No.1, the suit property was purported to be ancestral in nature. That being so, it was concluded that the suit land was a part of the ancestral

property of the plaintiffs and defendant No.1 Sri Krishan. Although, plaintiffs claimed themselves to be the exclusive owners of the suit property pursuant to a family settlement, but nothing was brought on record to substantiate the said plea. No date or year, when the alleged family settlement was arrived at between the parties, was mentioned in the plaint. No evidence was brought on record in this regard. On the contrary, defendant No.1 had claimed that Sara Devi had executed a will qua her 1/5th share, i.e. the suit property, in his favour, thus he had become the owner thereof. To prove the execution of the will dated 20.07.1988, defendants failed to examine any of the attesting witness of the will. Defendant No.1, in his cross-examination, conceded that the witnesses Chhaju Ram and Sardara Nambardar, were present at the time of execution of the will. Though, he examined Sarup Singh Yadav, Draftsman (DW2), who purported to have scribed the will, but his testimony revealed that he never deposed that the will in question was read over and explained to Sara Devi in the presence of the witnesses and she put her thumb impression in their presence and thereafter, both the attesting witnesses put their thumb impressions upon the document. Sarup Singh Yadav (DW2) also never deposed that he appeared along with Sara Devi before the Sub Registrar for registration of the will. Resultantly, it was concluded that Sarup SinghYadav (DW2) had simply produced the will

(Ex.DW2/A) that was scribed by him and, therefore, he could not be termed as an attesting witness of the will. Nothing was brought on record by defendant No.1 to explain as to why none of the attesting witness of the will in question was examined. Further, nothing was brought on record to show that both the said witnesses had since passed away. That being so, defendant No.1 had apparently failed to prove the due execution of the will dated 20.07.1988, purported to have been executed by his mother Sara Devi. As plaintiffs had also failed to prove that pursuant to a family settlement or partition, the suit property had fallen to their share, the property in dispute could only be recorded as ancestral property of all the legal heirs of Mool Chand and his wife Sara Devi. Though, all the sons and daughters of Mool Chand were not arrayed as party to the lis, however, it was clear that plaintiffs being sons of Ram Chander son of Mool Chand certainly had a share in the suit land. Similarly, even defendant No.1 Sri Krishan also had a share in the suit property. Since, defendant No.1 had executed a sale deed dated 21.07.2004, in favour of defendant No.2, the said sale deed could only be termed as alienation qua his share by defendant No.1, which could be ascertained at the time of partition. That being so, it was concluded that defendant No.2 was simply a cosharer in the suit property to the extent of share of defendant No.1, which could be decided at the time of

partition of the joint land. Likewise, plaintiffs being cosharers qua the suit property, could not be held to be exclusive owners in possession. As a result, the appeal was partly accepted, while holding that defendant No.1 had failed to prove the will dated 20.07.1988. And plaintiffs and defendants were held to be the cosharers in the suit land along with the other legal heirs of Mool Chand. The sale deed dated 21.07.2004, executed by defendant No.1, in favour of defendant No.2, would only be considered as regards to a sale of share of defendant No.1 in the suit land, which would be determined at the time of partition.

I have heard learned counsel for the appellant and perused the RSA paper book.

Learned counsel for the appellant could not point out as to how the conclusion arrived at by the first appellate court was either contrary to the position on record or suffered from any material illegality. He simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

Needless to assert, plaintiffs having failed to prove that pursuant to any family settlement, the suit property had exclusively fallen to their share, were not entitled to a declaration prayed for. Likewise, defendant No.1 having failed to prove the due and valid execution of the will dated

20.07.1988, by his mother Sara Devi, could not claim himself to be the exclusive owner of the suit land. Concededly, none of the attesting witnesses of the will was examined. Nothing was brought on record to prove that both the said witnesses had since passed away. Even otherwise, Sara Devi had four sons and it was quite strange that as a mother she would execute a will only in favour of one of her sons. So much so, Sri Krishan (DW1) testified in his cross-examination, that his mother treated his four brothers alike and she had given share to all four of them. Thus, defendant No.1 only had a share in the suit property, being son of Mool Chand, and the sale deed executed by him, in favour of defendant No.2, could only be termed as a sale of share in the joint property.

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

February 25, 2015
Rajan

(Arun Palli)
Judge