

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.4161 of 2014 (O&M)

.....

Date of decision:8.7.2015

Anil Kumar

.....Appellant

v.

Pooja and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Naveen S. Bhardwaj, Advocate for the appellant.

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Inderjit Singh, J.

This regular second appeal has been filed by Anil Kumar-appellant-defendant No.1 against Pooja and Deepak (minor daughter and son) of Pawan Kumar through their mother Smt. Santosh-respondents/plaintiffs and Pawan Kumar-proforma-respondent/defendant No.2 challenging the impugned judgment and decree dated 26.9.2012 passed by the learned Additional Civil Judge (Senior Division), Bhiwani, and the impugned judgment and decree dated 8.7.2014 passed by the learned Additional District Judge, Bhiwani, vide which the appeal filed by Anil Kumar has been dismissed. Aggrieved against the judgment and decree passed in appeal, this regular second appeal has been filed.

At the time of arguments, learned counsel for the appellant

argued that the Courts below have wrongly given the findings that the property is ancestral property without going through the complete revenue record and secondly, he argued that the appellant has become owner on the basis of release deed executed by defendant No.2, namely, Pawan Kumar in his favour which is a registered document and is for consideration.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that plaintiffs-Pooja and Deepak-minors have filed suit through their mother for declaration that the release deed No.2920 executed by defendant No.2 in favour of defendant No.1 registered on 9.1.2008 to the extent of land measuring 17 Kanals is illegal, null and void and without consideration. The said release deed is an outcome of fraud and is not binding on the rights of the plaintiffs. It is the case of the plaintiffs that defendant No.2 Pawan Kumar is the father of the plaintiffs, who was owner in possession of land to the extent of 1/6 share out of total land measuring 500 Kanals and the said property is Hindu co-parcenary property and the plaintiffs along with their mother Santosh are also co-parceners in the same. Defendant No.2 is a person with bad vices, who is a habitual drunkard and has certain other bad habits. Defendant No.1 is a clever person and as the property is recorded in the name of defendant No.2 in the capacity of 'Karta' of Joint Hindu Family, so defendant No.1 by taking advantage of the situation managed to procure a release deed in his favour vide release deed No.2920 dated 9.1.2008 qua 17 Kanals of land executed by defendant No.2 in favour of defendant No.1. The said release

deed is without legal necessity and consideration and is liable to be set aside.

On the other hand, the case of defendant No.1 is that the plaintiffs have not approached the Court with clean hands and defendants No.1 and 2 are from the same family and their great grandfather Nathu was common. Nathu had three sons, namely, Khushi Ram, Ram Swarup and Prahlad and Pawan is son of Prahlad and Khushi Ram had four sons, namely, Om Parkash, Umed Singh, Rambir and Kamal Singh and defendant No.1 is son of Om Parkash. In this manner, defendant No.2 is uncle of defendant No.1. It is further stated that defendant No.2 had taken loan from the Bank as he had mortgaged the property and for the said amount, he had entered into an agreement to sell qua the land measuring 40 Kanals for a sale consideration of ₹2 Lacs per acre and had taken a sum of ₹3,50,000/- from Surender Singh and had subsequently taken a sum of ₹1 Lac. Defendant No.2 resiled from alienating the said property and for this cancellation of the agreement, loan of ₹5,40,000/- was taken by him from defendant No.1. It is further stated that defendant No.2 had to pay a sum of ₹95,000/- to Bhoop Singh and the said amount was advanced by defendant No.1 to defendant No.2 and total amount of ₹6,35,000/- was advanced on various occasions to defendant No.2 by defendant No.1 and in lieu of the said amount, defendant No.2 executed a release deed in his favour and handed over the possession.

After going through the evidence on record, the learned Additional Civil Judge (Senior Division), Bhiwani, decreed the suit of the

plaintiffs declaring the release deed as illegal, null and void and not binding on the defendants. An appeal was filed by defendant No.1 Anil Kumar before the Learned District Judge and the learned Additional District Judge, Bhiwani, vide judgment and decree dated 8.7.2014 dismissed the appeal. Aggrieved from this judgment, the present RSA has been filed.

A perusal of the record shows that the defendants have admitted the nature of the property as Joint Hindu Family co-parcenary property. This fact has been found mentioned by the Courts below further in the release deed. This fact has been mentioned that the suit land is Joint Hindu Property, which is inherited by Pawan Kumar from his father and his father inherited the same through mutation No.391. The defendants are relying on Ex.D.1 and this recital is in the said release deed. Further the Court has also taken note of mutation No.39, which is Mark-B, sanctioned in favour of father of defendant No.2 on demise of grandfather of defendant No.2. The learned Additional District Judge, Bhiwani, also discussed the entries in the Jamabandi for the year 2008-09. Both the Courts below while correctly appreciating the evidence held that the property in question is Joint Hindu Family coparcenary property. The plaintiffs being the children of defendant No.2 are the coparceners in this ancestral property and defendant No.2 Pawan Kumar is 'Karta' of the family. It is well settled that 'Karta' cannot alienate Joint Hindu Family ancestral property without legal necessity. In the present case, admittedly no consideration has been passed for executing the release deed in favour of defendant No.1 Anil Kumar, who is nephew of defendant No.2. There is nothing that this release deed is for consideration.

Therefore, this release deed is without consideration.

As regards the version given by defendant No.1 that loan was taken by defendant No.2, there is no cogent document on record nor this fact has been mentioned in the release deed, nor, in any way, this release deed can be held as sale deed for consideration.

Learned counsel for the appellant at the time of arguments also argued that there is no documentary evidence on record to prove the ancestral nature of the property. This argument of the learned counsel for the appellants has no force because the Courts below have relied upon the entries in the Jamabandi, mutation and the recital in the release deed. Therefore, it cannot be held that only on oral evidence the Court has held the property as ancestral property. Learned counsel for the appellants at the time of arguments also argued that suit for declaration without arguing for the relief of possession is not maintainable. On this point, I find that the plaintiffs have filed the suit for declaration with consequential relief of permanent injunction that defendant No.1 be restrained from interfering into the peaceful possession of the plaintiffs over the land in dispute and defendant No.1 be further restrained from alienating, mortgaging and executing any gift deed or transferring the land in dispute, in any manner. The release deed has been executed on 9.1.2008 and the suit has been filed on 2.4.2008 i.e. less than within three months. There is nothing on the record to show whether the actual possession of the suit land has been handed over to defendant No.1 because the release deed was only to the extent of share. Therefore, the present suit cannot be held only for mere

declaration. The suit of the plaintiff is maintainable.

Therefore, the findings given by the both the Courts below are correct and as per law and do not require any interference from this Court and the judgments and decrees of both the Courts below, which have been given on concurrent findings are upheld. No substantial question of law arises in this regular second appeal.

Finding no merit in the regular second appeal, the same is dismissed.

July 8, 2015.

(Inderjit Singh)
Judge

hsp