

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4541 of 2014 (O&M)
Date of Decision: April 30, 2015

Smt.Devi

...Appellant

Versus

Lal Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

INDERJIT SINGH, J.

Appellant-plaintiff Smt.Devi has filed this regular second appeal against Lala Ram and other respondents, Naresh and Sanjay proforma respondents challenging the judgment and decree dated 24.05.2012 passed by learned Addl. Civil Judge (Senior Division), Gurgaon vide which the suit for declaration filed by appellant-plaintiff was dismissed and also judgment and decree dated 22.04.2014 passed by learned Addl. District Judge, Gurgaon, vide which appeal filed by appellant was dismissed.

The brief facts of the case are that Smt.Umar Devi (present appellant), Naresh Umar and Sanjay Umar filed a suit against Lala Ram and other defendants for declaration to the fact that in the land in dispute as fully described in the headnote of the plaint measuring 26 kanal 3 marla along with other properties, plaintiff No.1

is having 1/4th share as owner in possession, plaintiffs No.2 and 3 are having 1/4th share as owners in possession in equal shares; defendants No.1 and 2 are having 1/4th share as owners in possession in equal shares, defendants No.3 to 13 have 1/8th share as owner in possession in equal shares and alleged Will dated 18.12.1972 executed by Munshi in favour of Ram Chander, Ganpat and Lala Ram and mutation dated 31.03.1980 and subsequent record are wrong, illegal and not binding upon the rights of the plaintiffs. The defendants have no right to be the owner in possession of the land in dispute and they are not legally entitled to have any right in the share of the plaintiffs.

As per the case of the plaintiffs, Munshi was common ancestor of the plaintiffs and the defendants and was having two sons namely Ram Chander and Kundan and they all were residing jointly and constituted a joint Hindu Family and Munshi Ram was *karta* of the said joint Hindu Family. Kundan was not having son but was having two daughters namely Smt.Devi and Smt.Santra. Ram Chander was having two sons and two daughters. It is also stated that property in the name of Munshi was coparcenary and the same had been inherited by Munshi from his ancestors and as such, Munshi did not have any right to alienate the said land without any legal necessity. It is also the case of the plaintiffs that defendant No.1, his brother and their father secretly got executed the Will dated 18.12.1972 and after the death of Munshi, got registered the same and got mutation of inheritance dated 31.03.1980 in their favour and after the death of

Ram Chander, his inheritance was entered and sanctioned vide mutation dated 22.01.1983. These facts came to the knowledge of the plaintiffs in February 2006, when they got the copies of the revenue record.

On the other hand, the case of defendants No.2 to 6, 9, 10, 12 and 13 is that plaintiffs are neither owners nor in possession of the suit land. It is denied that Munshi and his two sons used to reside together or they formed a joint Hindu Family or that they were coparceners. It has also been denied that the suit property had come to Munshi from his ancestors or that he was not entitled to alienate the same. It is also denied that Munshi was not competent to execute the Will or that he did not execute the Will. It has also been denied that the Will dated 18.12.1972 was got executed by fraud etc.

Both the parties led evidence. Learned Addl. Civil Judge (Senior Division) Gurgaon, vide judgment and decree dated 24.05.2012 dismissed the suit of the plaintiff. An appeal was filed by the plaintiffs and the same was also dismissed vide judgment and decree dated 22.04.2014 passed by learned Addl. District Judge, Gurgaon.

Aggrieved from the above-said judgments and decrees, present appeal has been filed by the appellant.

Learned counsel for the appellant, at the time of arguments, argued that the suit property is ancestral coparcenary property and Munshi had no right to execute the Will for the whole property and the findings given by the Courts below are incorrect.

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

At the time of arguments, learned counsel for the appellant has not argued regarding the execution of the Will. Otherwise also, the Will has been executed in the year 1972 and got registered in 1979 and the mutation on the basis of Will has been executed in the year 1980. The Will is also a registered document. The defendants are in possession of the suit property. The entries have been made in the revenue record. The suit has been filed by the plaintiffs on 22.02.2006 i.e. about 25 years after the death of Munshi. Secondly, as held by learned Addl. Civil Judge, there is no document on record to show that suit land had come to Munshi from his ancestors. The plaintiffs are alleging the suit land as coparcenary property but there is no document on record to prove the fact that suit land is ancestral or coparcenary property and it has come to Munshi from his ancestors.

In view of the above discussion, I find that the concurrent findings given by both the Courts below are correct, as per law and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

April 30, 2015
Vgulati

(INDERJIT SINGH)
JUDGE