

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 5093 of 2014 (O&M)
Date of decision 28.08.2015.

Pardeep and another

..... Appellants.

versus

Om Singh and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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?

Present : Mr. S.S.Kharb, Advocate for the appellants.

K.C.PURI, J.

C.M. No.12013-C of 2014.

For the reasons mentioned in the application, delay of 66 days in re-filing the appeal stands condoned. CM stands disposed of accordingly.

C.M. No.12021-C of 2014.

2. For the reasons mentioned in the application, delay of 16 days in filing the appeal stands condoned. CM stands disposed of accordingly.

MAIN CASE.

3. This is an appeal directed by plaintiff/appellants against the judgment and decree dated 28.11.2013 passed by Shri Jasbir Singh Kundu, Additional District Judge, Jhajjar vide which the appeal preferred by them against the judgment and decree dated 15.04.2010 passed by Shri Man Pal,

the then learned Civil Judge (Junior Division), Bahadurgarh was dismissed.

4. Brief facts of the present case are that the plaintiffs are minors and they have filed the present suit through their mother Smt. Phoolmati who has not adverse interest to that of minors. The parties to the suit are related to each other and they are co-parcener and member of HUF as shown in the pedigree table given in Para No.2 of the plaintiff. The defendant No.1 was recorded owner in possession of $\frac{1}{2}$ share in the land measuring 185 kanal, 16 marlas, situated within the revenue estate of village Sankhol Tehsil Bahadurgarh (Jhajjar) as per fard jamabandi for the year 1995-96. the suit property is ancestral in the hands of defendant No.1 and the plaintiffs are co-parceners and have got $\frac{2}{5}$ share in the suit property. The defendant No.1 Tek Chand is the Karta of the family and the plaintiff and defendants No.1 to 3 are governed by Mitakshra School of Hindu Law. The suit property was inherited by defendant No.1 from his father Krishan Lal. The plaintiffs and defendants No.1 to 3 are members of HUF and are co-parceners in the suit property as per judgment and decree dated 11.04.2002. But in the revenue record the defendant No.1 is wrongly shown as owner of the entire suit property. The defendant No.1 is in control and under the influence of the second wife, defendant No.4 Smt. Satto Devi. The defendant No.1 is also a man of bad habits and he spent the HUF funds for immoral purposes such as gambling, drinking, etc.

5. It is alleged that defendants No.1 to 4 in collusion with each other and to deprive the plaintiffs from their share, got filed a suit

in the Court of Civil Judge, Bahadurgarh and procured a compromise decree dated 28.03.1998 in favour of defendant No.4 and thereafter, mutation No.2783 was also entered and sanctioned on the basis of aforesaid decree. Thereafter, on the basis of aforesaid judgment and decree dated 28.03.1998, defendants No.1 to 4 got their alleged share separated from the other co-sharers by way of partition of Khewat vide mutation No.2956. Now after that partition defendant No.1 was allotted land measuring 76 kanal, 13 marla, fully detailed and described in para No.11 of the plaint, vide mutation No.2956. Thereafter, the defendant No.1 at the instance of defendant No.4 sold away land measuring 3 kanal 18 marlas bearing Killa No.56/18/1/2 in favour of defendants No.5 to 7 for a consideration of Rs.3,90,000/- vide registered sale deed dated 16.10.2000 without legal necessity and without the consent of other co-parceners. That sale was without legal necessity. Now, the aforesaid compromise decree dated 28.03.1998, mutation No.2387, 2980 and sale deed dated 16.10.2000 are illegal, null and void and the same have been challenged by the plaintiffs on the grounds that the same are without legal necessity, without benefit of estate and without the consent of other co-parceners.

6. It is further pleaded that the plaintiffs came to know about the aforesaid transaction only when some stranger persons started putting earth in the suit property in the month of January 2003 and applied for certified copy of all the documents. The defendant No.4 along with defendant No.1 are further threatening to alienate the

remaining ancestral land without legal necessity. The plaintiffs requested the defendants not to do so, but the defendants refused, hence this suit.

7. Upon notice, the defendant No.1 Om Singh appeared and he filed his written statement by admitting the claim of the plaintiffs in toto.

8. The defendants No.3 and 4 also appeared and they filed their joint written statement by taking several preliminary objection that the present suit is not legally maintainable; that the plaintiffs have no locus standi to file the present suit; that the plaintiffs have not come to the Court with clean hands and that the present suit is bad for non-joinder and mis-joinder of necessary parties. On merit, it is specifically denied that the suit property is co-parcenary property. However, it is admitted that defendant No.1 is co-sharer of $\frac{1}{2}$ share in the property mentioned in Para No.3 of the plaint. It is also denied that the plaintiffs have got $\frac{2}{5}$ share in the suit property. It is further denied that the parties are governed by Mitakshra School of Hindu Law. It is further alleged that Tek Chand defendant No.1 was seriously ill during his old age and upto his death he remained under treatment for more than two years. The father and mother of present plaintiffs never looked after him during his illness and that is why he sold part of the property for his treatment. Tek Chand also remained admitted in various Hospital as well as Medical Hospital Rohtak and a huge amount was spent on his illness. The sale deed along with civil court decree are legal valid

and binding on all and the same are as per law. It is denied that the defendant No.1 is selling the suit property without legal necessity and in last defendants prayed for dismissal of the suit with cost.

9. Defendants No.5 to 7 also appeared and they also filed their separate written statement by taking several preliminary objection that the suit is not maintainable; that the plaintiffs have no locus standi to file the present suit; that the suit is bad for misjoinder and non-joinder of necessary parties; that the suit is time barred. On merit it is alleged that Sh.Tek Chand defendant No.1 was seriously ill during his old age and he remained ill for two years upto his death and he was in need of money and after making necessary inquiry these defendants purchased the suit land measuring 3kanal 18marlas vide registered sale deed dated 16.10.2000 for valuable consideration and now the answering defendants are owners in possession of the land so purchased by them. Answering defendants also prayed for dismissal of the suit.

10. Replication to the written statement was also filed. From the pleadings of the parties following issues were framed vide order dated 01.06.2006:-

1. Whether compromise decree and judgment dated 28.03.1998 is illegal, null and void and is liable to be set-aside on the ground mentioned in Para No.13 of the plaint? OPP.
2. Whether the plaintiff is owner in possession of 2/5th share in the entire co-parcenary/ancestral property as alleged in the plaintiff? OPP.
3. Whether the suit property is HUF co-parcenary-ancestral property of plaintiffs and defendants No.1

to 3 as alleged in the plaint? OPP.

4. Whether the plaintiff is entitled to the decree for declaration on the ground as alleged in the plaint? OPP.
5. Whether the present suit is not maintainable in the present form? OPD.
6. Whether the plaintiffs have no locus standi to file the present suit? OPD.
7. Whether the plaintiffs have not come to the court with clean hands in the court and they have suppressed the material facts? OPD.
8. Whether the suit of the plaintiff is bad for nonjoinder and misjoinder of necessary parties? OPD.
9. Relief.

11. The parties have led their respective evidence on the aforesaid issues. The trial Court after appraisal of the evidence dismissed the suit of the plaintiff vide judgment and decree dated 15.04.2010.

12. Feeling aggrieved, the plaintiffs preferred First appeal. The learned Additional District Judge, Gurdaspur vide judgment and decree dated 28.11.2013 dismissed the appeal of the plaintiffs.

13. Feeling dissatisfied with the aforesaid judgments and decrees dated 15.04.2010 and 28.11.2013, the present regular second appeal has been directed by the plaintiff/appellant.

14. The appellants in paragraph No.8 of the grounds of appeal, have mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (i) Whether the plaintiff-appellants are entitled to their share in the suit property i.e. ancestral property since birth ?
- (ii) Whether the interest of respondent Nos.4 to 6 are illegally protected by the Ld. Trial Court, though it was

held that the sale was null and void ?

- (iii) Whether the suit was bad for nonjoinder of necessary parties ?
- (iv) Whether the suit was time barred ?
- (v) Whether the findings of both the learned courts below are perverse and the same are liable to be set aside ?
- (vi) Whether grave and manifest injustice has been caused to the appellants ?

15. I have heard learned counsel for the appellant and have gone through the case file with his able assistance

16. Learned counsel for the appellants has submitted that there is a finding of facts recorded by both the Courts below that suit property is joint Hindu family coparcenary property. So, in these circumstances, finding of both the Courts below that suit property is joint Hindu family coparcenary property does not fall in legal necessity, is wrong, although the plaintiff has been given another land out of the joint land but the sale deed and decree in respect of portion of ancestral land is liable to be set aside. The plaintiff has share in the suit property by birth. The sale should have been set aside. The suit is not time barred. The judgments of both the Courts below, perverse and grave manifest injustice has been caused to the appellant by the judgments of both the Courts below.

17. I have carefully considered the said submission but do not find any force in that submission.

18. The suit property is a very small portion of whole of the property owned by Tek Singh. Both the Courts below have given a finding that Karta has sold the property for legal necessity. That finding of fact

cannot be interfered in the regular second appeal, more-so when there is no evidence on the file that judgments of both the Courts below are the result of misreading and misinterpreting the evidence on the record. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal. Consequently, the appeal is without any merit and the same stands dismissed.

19. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

August 28 , 2015
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