

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5514 of 2014 (O&M)
Date of Decision: July 27, 2015

Savita and others

...Appellants

Versus

Dhora and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rashid, Advocate for
 Mr.Mohammed Arshad, Advocate
 for the appellants.

INDERJIT SINGH, J.

Appellants-Smt.Savita and others (LRs of plaintiff Satbir) and appellants-plaintiffs Net Ram and Smt.Rajwati have filed this regular second appeal against respondents-defendants Smt.Dhora and others, challenging the impugned judgment and decree dated 28.07.2010 passed by learned Addl. Civil Judge (Senior Division) Hathin, vide which the suit filed by the plaintiffs for declaration and permanent injunction was dismissed and also the judgment and decree dated 03.09.2014 passed by learned Addl. District Judge, Palwal, vide which the appeal filed by the plaintiffs-appellants was dismissed.

The brief facts of the case are that plaintiffs Satbir (now deceased), Net Ram and Smt.Rajwati filed a suit against defendants

Smt.Dhora, Raghbir, Rajinder Singh, Smt.Om Wati, Smt.Amar Wati, Khan Chand and Basant Lal, for declaration and permanent injunction, stating therein that father of plaintiffs Satbir and Net Ram, and husband of plaintiff Smt.Rajwati was owner in possession of agricultural land measuring 41 kanals 17 marlas as per jamabandi for year 1991-1992. Smt.Dhora, fraudulently with the intention to disinherit the plaintiffs from the suit property, got suffered a decree regarding the suit property in her favour in case titled as 'Smt.Dhora vs. Bhagwan Sahai' and decree was passed on 22.01.1991. However, that is not binding on the rights of the plaintiffs as the suit property was ancestral property in the hands of Bhagwan Sahai. Defendant No.1 appeared and filed written statement mainly admitting these facts. It is also stated in the written statement that defendant No.2 fraudulently got executed a General Power of Attorney in his favour and then executed sale deed in favour of his brother Rajinder Singh and Om Wati on 18.03.1998 regarding 41 kanals 17 marlas land. It is also stated that sale deed does not create any right, title and interest in favour defendants and is illegal, null and void. It is further stated that plaintiffs are still owners in possession of land in question. It is also the case that later on Rajinder Singh and Om Wati executed lease deed on 25.03.1998 in favour of Khan Chand and Basant Lal.

Defendant No.2 to 4 contested the case and denied the averments of the plaint. It is denied that suit property is ancestral and that the civil Court decree is illegal.

After framing the issues and after going through the evidence led by the parties, learned Addl. Civil Judge (Senior Division) Hathin, dismissed the suit of the plaintiffs vide judgment and decree dated 28.07.2010. An appeal was filed by the appellants-plaintiffs, which was also dismissed by learned Addl. District Judge, Palwal vide judgment and decree dated 03.09.2014.

Aggrieved from the above-said judgments and decrees passed by the Courts below, present regular second appeal has been filed by the appellants-plaintiffs.

At the time of arguments, learned counsel for the appellants argued that the findings given by the Courts below are incorrect, not as per evidence and the same are liable to be set aside.

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

From the record, first of all, I find that plaintiffs are claiming right over the suit property by stating that suit property is ancestral coparcenary property of the plaintiffs. The perusal of the record shows that no cogent evidence has been led by the plaintiffs-appellants to prove that the suit property was ancestral coparcenary property in the hands of Bhagwan Sahai. There is only statement of plaintiff Rajwati as PW. The oral statement of the witness is insufficient to prove the nature of the property as ancestral. No revenue record has been produced on the file to show that Bhagwan Sahai inherited the property from his father and his father has further inherited the property from his father. Therefore, from the above, I

find that the Courts below have correctly held that property was separate property in the hands of Bhagwan Sahai. If the property is not ancestral property, then Bhagwan Sahai was competent to transfer the same on the basis of Civil Court decree. In no way, it can be held that Smt.Dhora, who was wife of Bhagwan Sahai was not having pre-existing right at that time. Otherwise also, the decree has been passed in the year 1991 and Bhagwan Sahai is stated to have died in the year 1991 as argued by learned counsel for the appellant at the time of arguments. The decree has not been challenged within three years i.e. period of limitation.

In view of the above discussion, I find that the findings given by the Courts below are correct, as per law and evidence and do not require any interference from this Court. The judgments and decrees passed by the Courts below are upheld. No substantial question of law arises in this regular second appeal.

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

July 27, 2015
Vgulati

(INDERJIT SINGH)
JUDGE