

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 7847 of 2014 (O&M)

Date of decision: 05.04.2016

Batto Devi

... Petitioner

versus

Phool Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Yowan Sharma, Advocate for the petitioner.

K.Kannan, J. (ORAL)

The respondents have not been served. I asked the counsel for the petitioner to inform me about the nature of the order in dispute in challenge. On hearing, I am convinced that it is not a case of even service of notice on respondents and therefore proceed to dispose of the case after hearing the arguments of the petitioner.

It is a suit by the plaintiff that the properties are ancestral and the sale affected by the father including the plaintiff's own share and putting the defendants in possession is illegal, null and void. The plaintiff has stated in para No. 6 of the plaint that after the decree, revenue entries and sales which have taken place between the years 1985 to 2008 were null and void would contend that she asked the defendants to recognize the plaintiff as co-heir but the defendants are not prepared to recognize the plaintiff's status. The plaintiff seeks for, therefore, a declaration that the sales are null and void to bind the share and that they should be set aside on the basis that it is a co-parcenary property and also for the prayer for recovery of possession if the defendants are in possession of the properties. The counsel refers me to two judgments of this Court in Kulwant Kaur and others Vs. Joginder Kaur and others, 2011(3) ccc 200 (P&H), that if the plaintiff seeks for joint possession Section 7(iv) (c) would alone be attracted and it is not necessary to pay the *ad valorem* Court fee on the value of the property

which was said to be conveyed if the plaintiff is also not a party to the transactions.

A person admitted to be in possession or could be deemed to be in possession of the property is held among the co-parceners. If the property is sold by a person acting as a manager and the purchasers take possession of the property under the sales which have taken place between the years 1985 to 2008, the possession of the stranger purchasers cannot be held as joint. It was only for this reason that the suit is required to be instituted. In the first place, the transfer by a manager in relation to ancestral property is not void. It is voidable and therefore required to be set aside. If the relief is tenable and the Court finds that the sales are required to be set aside for lack of proof of family necessity or family benefit, recovery of possession for a person who has been kept out of the share could be ordered. The deeming joint possession with a co-parcener cannot be equated to a possession of a purchaser from a manager of the family who has taken possession of the whole extent. In such an eventuality the recovery of possession shall be consequential to the declaratory relief of the sales being invalid and the dispensation in Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010 (2) Apex Court Judgments 421 (SC) itself is an answer to the contention raised by the petitioner that Section 7(v) will operate and the Court fee has to be paid in the manner contemplated in the said Section.

The order passed by the court below is sustained and the revision petition is dismissed. The time for complying with the direction for payment of Court fee is provided for a further period of 4 weeks failing which the Court will invoke the provisions under Order 7 rule 11 (c) CPC for rejection of the plaint.

(K.KANNAN)
JUDGE

05.04.2016

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