

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2246 of 2011 (O&M)
Date of Decision : 11.01.2016

Om Parkash and othersAppellants

Versus

Smt. Jeewani and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. P.K. Mutneja, Advocate
for the appellants.

Mr. H.S. Sullar, Advocate
for the respondents.

Surinder Gupta, J.

Against the judgment of reversal and decree passed in first appeal by Additional District Judge, Fast Track Court, Hisar, the defendants Om Parkash and others have come up with this second appeal.

2. In later part of judgment parties will be referred as 'plaintiffs' and 'defendants' as per civil suit.

3. Balbir Singh (deceased), now represented by legal heirs, filed suit challenging the release deed No. 1537 dated 31.08.2005 executed by his father Hari Singh-defendant no. 4 in favour of defendants no. 1 to 3 i.e. brother and nephews of plaintiff and consequent mutation on the ground that suit land is joint Hindu family coparcenary property in the hands of defendant no. 4, who being *karta* of the family was not competent to alienate the same in favour of defendants no. 1 to 3.

4. The defendants contested claim of plaintiff *inter alia* pleading that the suit land was self acquired property of

defendant no. 4 who had every right to alienate the same.

5. The suit was dismissed by learned Civil Judge (Junior Division), Hisar. However, in appeal Ist Appellate Court, Hisar set aside the judgment of Civil Judge (Junior Division), Hisar and decreed the suit only to the extent that the impugned release deed dated 31.08.2005 (Ex. P-1) suffered by Hari Singh-defendant no. 4 in favour of defendant no. 1 to 3 was illegal, null and void and set aside.

6. This fact is admitted that suit property was owned by Sanwal father of Hari Singh and was inherited by Hari Singh by way of Will dated 17.11.1988 alongwith his brother Chattar Singh. Plaintiffs have not challenged the legality and validity of Will dated 17.11.1988. In view of above, this fact is not proved that the suit property was joint Hindu family coparcenary property in the hands of Hari Singh-defendant no. 4.

7. Ist Appellate Court, however, set aside the release deed executed by Hari Singh in favour of his son Om Parkash and grandsons Naresh and Suresh with the observations that though Hari Singh has inherited his share in the suit land through Will of his father but that Will has nowhere authorized Hari Singh with any power to alienate it. While reaching this conclusion, Ist Appellate Court took into account the recital in the Will and observed that Sanwal had bestowed his land on his sons Hari Singh and Chattar Singh, but they were not given any power to alienate it. From this the Ist Appellate Court inferred that intention of Sanwal was that defendant no. 1 would take the suit property as ancestral.

8. I have perused the Will (Ex. D-1) by which Sanwal bequeathed his entire movable and immovable property to his sons Hari Singh and Chattar Singh by ignoring his three daughters. There is no recital in the Will that suit land was joint Hindu family coparcenary property and Sanwal had expressed any intention that his sons Hari Singh and Chattar Singh should not alienate it. The inference drawn by Ist Appellate Court that Hari Singh was not given any power to alienate the suit land or that Sanwal intended that Hari Singh will take the suit land as ancestral, are not borne out from the recitals in Will (Ex. D-1). The above findings are apparently against the evidence on record.

9. Learned counsel for the respondents has argued that from the recital in the release deed (Ex. P-1), it is clear that suit land was ancestral land in the hands of Hari Singh. Plaintiff is also one of the son of Hari Singh and could not be deprived of his share in the suit land. Though, Hari Singh has inherited suit land from his father through a Will still the release deed reflects that he had been treating the suit land as ancestral.

10. On giving a careful thought to the submissions made by learned counsel for the parties and on perusal of the paper-book and judgments of Courts below, I find that following substantial question of law requiring determination arises in this appeal:-

As to whether the findings recorded by the Ist Appellate Court are not based on evidence on record?”

11. From the evidence on record, it is proved that suit land was self acquired property of Sanwal who further bestowed the same on his two sons Hari Singh and Chattar Singh. Hari Singh being the exclusive owner of suit land, which was his self acquired property, was not barred from alienating the same in favour of defendants no.1 to 3 by executing the release deed. It appears that findings of Ist Appellate Court are swayed by the averment in the release deed (Ex. P-1) that suit land is ancestral (*Dadala*) land. This recital in the release deed in no manner reflect that suit land was the ancestral property in the hands of Hari Singh. Plaintiff had been admitting the same to be self acquired property of Hari Singh and had not produced on record any evidence to show that it had devolved upon Hari Singh and earlier to that his grandfather Sanwal from his ancestors. The mere mention that this land has come from ancestors without proving that it has devolved on Hari Singh by way of survivorship, suit land could not be held as ancestral property and inference drawn on the basis of above recital by Ist Appellate Court that intention of Sanwal was to give suit property as ancestral to Hari Singh is unfounded and not based on evidence on record.

12. Ist Appellate Court has also referred to Act No. 10 of 2000 while observing that release deed could be suffered only in respect of ancestral property. The above reference is also without any basis. The Act No. 10 of 2000 is Indian Stamp (Haryana Amendment) Act, 2000 whereby the existing Article 55 was amended for the purpose of stamp fee required on the release

deed. This fact nowhere provides that it applies only to ancestral property.

13. The findings of Ist Appellate Court are illegal, perverse and against documentary evidence on record thereby call for interference in this appeal.

14. In view of my above discussion, the substantial question of law framed in this appeal is answered in favour of appellants. This appeal has merits and the same is accepted. The judgment and decree passed by the Ist Appellate Court are set aside and that of the Civil Judge (Junior Division), Hisar is restored.

January 11, 2016
jk

(SURINDER GUPTA)
JUDGE