

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4049 of 2011 (O&M)
Date of Decision : 29.02.2016

Raj Kumar

....Appellant

Versus

Latika Dutta and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Jasbir Singh, Advocate
for the appellant.

Mr. Vipin Mahajan, Advocate
for respondent no. 1.

Surinder Gupta, J.

This is second appeal against the judgment and decree passed by Civil Judge (Junior Division), Gurdaspur, decreeing the suit of plaintiff-Latika Dutta for declaration to the effect that she is owner in possession of land measuring 2 *kanals* 3 *marlas* (*Min Lehnda*) comprised in Rect. No. 56 *Killa* No. 25/3 (2-6) situated in village Bhatoya, H.B No. 6/3, *Tehsil* Gurdaspur, as per *jamabandi* for the year 2002-2003 and registered sale deed dated 21.04.1992, executed by defendant no. 1-Sohan Singh in her favour. On appeal, judgment and decree passed by learned Civil Judge (Junior Division), Gurdaspur was affirmed by Additional District Judge, Gurdaspur.

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

3. Case of plaintiff, in brief, is that Beli Ram father of plaintiff was owner of the land in dispute. He had adopted defendant no. 1. The property was self-acquired property of Beli

Ram. Before purchasing the suit land, plaintiff had verified the title of defendant no. 1 over suit land and after verification she purchased the land vide sale deed dated 21.04.1992 for a sale consideration of ₹20,000/-. Possession of suit land was also delivered to her. Defendant no. 1 sold the suit property for his personal legal necessity and for consideration, as such, sale deed is a *bona fide* transaction and plaintiff is *bona fide* purchaser of suit land for valuable consideration. Defendant no. 2-Kewal Krishan son of defendant no. 1-Sohan Singh is the attesting witness of the sale deed. Now defendants no. 2 to 5 in collusion with defendant no.1 are falsely alleging that they constitute a joint Hindu family and property in dispute is joint Hindu family coparcenary property. Plaintiff raised a plea that being adopted son of Beli Ram defendant no. 1 was never a member of joint Hindu family.

4. Defendants no. 2 and 3 contested the claim of plaintiff *inter alia* pleading that defendant no. 1 is the adopted son of Beli Ram and suit property, which was inherited by him from his father, was joint Hindu family coparcenary property. Defendant no. 1, being one of the coparceners, has no right to sell the land more than of his share. The sale deed in question is null and void and not binding on the rights of defendants no. 2 and 3.

5. Learned Civil Judge (Junior Division), Gurdaspur observed that sale deed dated 21.04.1992 was validly executed by defendant no. 1-Sohan Singh of which defendant no. 2-Kewal Krishan was signatory as attesting witness. The sale deed has

not been challenged either by defendant no. 1 or defendants no. 2 to 5 till date, as such, on the strength of sale deed, plaintiff has become owner of suit land.

6. It is not disputed that execution of the sale deed is duly proved. On perusal of judgment (Ex. D-1) passed by Additional District Judge, Fast Track Court, Gurdaspur, it transpires that suit filed by Sushil Kumar and others sons of Sohan Singh, was decreed and they were declared as owners of suit land to the extent of 4/5th share of suit land measuring 46 *kanals* 7 *marlas* except land sold vide sale deeds Ex. D-2 and Ex. D-X produced in that case. In that suit neither plaintiff-Latika Dutta was a party nor her sale deed was under challenge. It is not disputed that in the revenue record, Sohan Singh was recorded as owner of suit land and he had sold the suit land measuring 2 *kanals* 3 *marlas* to plaintiff-Latika Dutta vide sale deed dated 21.04.1992. The civil suit was filed by Sushil Kumar and others on 23.08.1994, which was dismissed on 23.12.1998. The sale deed in favour of plaintiff is prior to filing of that suit. As she was neither a party to that suit nor sale deed executed in her favour was set aside that judgment is not binding on her.

7. Learned counsel for the appellant has argued that plaintiff-respondent no. 1 filed the suit seeking declaration of title but has not sought possession of suit land purchased by her, as such, suit was barred under Section 34 of the Special Relief Act, 1963. He has relied on the observations in the cases of **Ram Saran and another vs. Smt. Ganga Devi, AIR 1972 SC 2685**, **Gian Kaur vs. Raghubir Singh, 2011 (4) SCC 567**,

Smt. Beena Devi vs. Bail Chand another (RSA No. 3595 of 2010) decided on 09.09.2010, Mohinder Singh vs. Shamsher Singh, 2010 (2) RCR (Civil) 505, S. Bhagat Singh vs. Satnam Transport Co. Ltd. and others, AIR 1961 Punjab 278 (Vol. 48, C.84) (1) and Inder Singh vs. Financial Commissioner, Haryana and others, 2010 (1) RCR (Civil) 324.

8. On perusal of judgments of Courts below, I find that there is concurrent finding that plaintiff is owner in possession of suit property. Even otherwise she was one of the co-sharers and possession of one co-sharer is possession of every co-sharer until and unless a co-sharer set up his possession adversely against co-sharers not in possession. Ist Appellate Court has found that possession of land was given at the time of registration of sale deed.

9. In view of above, citations referred by learned counsel for the appellant are not applicable to facts and circumstances of present case.

10. I find no legal or factual infirmity in judgment of Court below calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

February 29, 2016
jk

(SURINDER GUPTA)
JUDGE