

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1064 of 2016 (O&M)

Date of Decision: 27.07.2016

Sunil

... Appellant

Vs.

Rajbir and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?
3. Whether the order is speaking/reasoned?

Present:- Mr. Rakesh Gupta, Advocate
for the appellant.

Amol Rattan Singh, J.

This is the second appeal of the plaintiff who had filed a suit for declaration before the learned Civil Judge (Junior Division), Tohana, seeking that the sale deeds dated 28.08.1998, 20.05.1999 and 02.12.2003, executed by his father, Ishwar, in favour of respondents-defendants No.1 and 2, qua agricultural land measuring 6 Kanals, be declared to be null and void, being based on fraud and that he be declared to be the owner of the said land thereafter.

2. It was averred that the plaintiffs' father was the adopted son of Chhaju Ram but was a drunkard and to fulfill his lust for liquor, Ishwar had sold the land without any necessity and without taking any permission from his family members, even though it was joint Hindu family coparcenary

property.

It was contended that at the time of execution of the sale deeds, the plaintiff was a minor and the suit had been filed by him, upon attaining majority.

3. Upon notice issued, the suit was contested by the defendants stating that Ishwar was not a drunkard and had received sale consideration for the suit land and further, that it was not in any case coparcenary property and the defendants were bonafide purchasers in possession of the land.

It was also contended that the plaintiff was more than 21 years old on the date of the filing of the suit.

4. The following issues were framed thereafter by the learned Civil Judge:-

- “1. Whether the sale deeds No.2975 dated 2.12.2003, 1748 dated 28.8.1998, 612 dated 20.5.1999 executed by the father of the plaintiff and the subsequent mutations sanctioned on the basis thereof are illegal, null and void and are not binding upon the rights of the plaintiffs, as alleged? OPP
2. If issue No.1 is proved, whether the plaintiff is liable to be declared the owner of the suit land? OPP
3. Whether the suit has been filed within the period of limitation? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiff has concealed the true and material facts from the Court, if so its effect? OPD
6. Whether the plaintiff has no locus-standi and or cause of action to file this suit? OPD

7. Whether the suit is false and frivolous and is liable to be dismissed with special costs? OPD
8. Whether the suit is bad for mis-joinder of parties and non-joinder of necessary parties? OPD
9. Whether the defendants are the bonafide purchasers of the suit land for consideration? OPD
10. Relief.”

5. The plaintiff stepped into the witness box himself and also examined one Baljeet Singh as PW2 and Amarjeet as PW3. Further, he relied upon an “age certificate” as Ex.P1.

The defendants examined defendant No.1 as DW1, one Sadhu Ram, Clerk of PCARD Bank as DW2 and Mahender Singh as DW3. They also tendered copies of the sale deeds dated 28.08.1998 and 20.05.1999 as Exs. D1 and D2 respectively, as also a receipt voucher of the aforesaid Bank as Ex.D3.

6. Upon appraisal of the aforesaid evidence and consideration of the pleadings and arguments, the learned Civil Judge, firstly, held that no revenue record was produced by way of evidence, by the plaintiff, to show that the land was ancestral property in the hands of his father Ishwar and as such, it could not be held to be so.

Secondly, no medical proof or treatment record was placed on file to show that Ishwar was a habitual drunkard and in fact, he was not even impleaded as a party to the suit.

Next, it was held that the witnesses examined by the defendants have categorically stated that the consideration amount was paid before the execution of the sale deed and no evidence to the contrary had been led by

the plaintiff.

7. As regards the contention of the plaintiff that there was no legal necessity to alienate the land, the defendants examined a Clerk of the Bank, DW2, who was held to have proved the receipt voucher, Ex.D3, to show that Ishwar had paid a sum of Rs.2,02,700/- to the bank, in the year 2003.

Other than this, the Civil Judge also found that the plaintiff, in his cross-examination, had stated that he was not aware of the facts mentioned in his affidavit, Ex.PW1/A, that had been accepted to be his examination-in-chief and as such, his “testimony cannot be considered”.

8. Lastly, it was held that in his cross-examination, PW3 Amarjeet, Accountant, had deposed that the application (with regard to the age of the plaintiff) moved by the father of the plaintiff, did not attach any x-ray or test reports therewith. It was also noticed by the Civil Judge that in his cross-examination, the plaintiff had admitted that he had also gone to a private school for some time and that he had got married 5 to 7 years ago and that no birth record etc. of other children was placed on record to corroborate the age certificate, Ex.P1.

Consequently, the suit of the plaintiff was dismissed.

9. In the first appeal filed by him, the learned lower Appellate Court also found that the plaintiff had led no evidence to show that the suit land had devolved upon the plaintiffs' father from his forefathers and as such the plaintiff had a coparcenary interest in it, or even that it was ancestral property which Ishwar could not have alienated.

It was further held that the suit to declare the sale deeds to be

null and void had been filed “after a gap of almost 21 years” and the only explanation given was that the plaintiff was a minor at the time of the execution of the sale deeds; however, even the age certificate, issued by the office of the Civil Surgeon, had not been proved in accordance with law.

Hence, the first appeal was also dismissed.

10. Before this Court, learned counsel for the appellant has also filed an application for leading additional evidence in the form of mutation entries made in the mutation registers on 19.07.1918, 03.04.1938, 04.12.1979, to try and prove that the suit property was actually ancestral property in the hands of the grand-father of the present appellant, i.e. father of his father Ishwar.

11. Having seen the copies of the documents annexed as Annexures A-3 to A5 with the aforesaid application (CM No.2915-C of 2016), it is seen from the translated copy of Annexure A-3 that land measuring 141 Kanals and 17 Marlas (or possibly 141 Bighas and 17 Biswas, the measurement description not having been given), was mutated by way of inheritance from Mata Ram to Chhajju Ram and Kundan on July 19, 1918, which is seen to have been accepted, presumably by the competent authority, on 22.08.1918. Similarly, it is seen from the translated copy of Annexure A-4 that it is projected to be a mutation of inheritance in favour of Chhajju, sanctioned on 10.03.1938. Thereafter, the translation of Annexure A-5 shows it to be again a mutation of succession in favour of Ishwar, father of the plaintiff, sanctioned on 28.12.1979. In this document Ishwar is shown to be the adopted son of Chhajju son of Mata Ram and in column No.13 of this copy

of the mutation register, it is stated as follows:-

“Succession of deceased through registered adoption deed no.14 dated 11.5.75 date of death 28.4.79.”

12. Mr. Rakesh Gupta, learned counsel for the appellant submitted that a perusal of the aforesaid revenue record, i.e. the mutation registers from 1918 to 1979, amply proved that the suit land had devolved upon Ishwar, father of the plaintiff-appellant, from at least two generations prior to him and as such, it was ancestral property in his hands. Hence, he submitted that the suit of the plaintiff deserves to be decreed, with Ishwar not having any right to deprive the appellant of his share in the ancestral property.

He further submitted that a perusal of the age certificate issued by the Civil Surgeon, Fatehabad (Ex.P1 before the Courts below), showing that as on 22.02.2010, the plaintiff was only between 17 to 19 years of age, was ample proof that he had filed the suit (out of which this second appeal arises), on 07.06.2011, within three years of his having attained majority.

Learned counsel further pointed to the statement of PW3 Amarjeet, Accountant in the office of the Civil Surgeon, who identified the signatures on the said certificate (Ex.P1) to be those of the Deputy Civil Surgeon. He further identified the signatures on the application (presumably for determination of the age of the appellant-plaintiff) to be those of Dr. O.P. Dhariwal, stated to be working at Fatehabad.

Mr. Gupta submitted that therefore, with the age certificate having been duly proved to be authentic, there was also no cause for the Courts below to have dismissed the suit of the appellant even on the ground

of limitation.

13. Having considered the aforesaid arguments, though as regards the mutation entries now sought to be led by way of additional evidence, a *prima -facie* perusal of these would definitely suggest that the suit land was at least ancestral property in the hands of the father of the appellant, if not also coparcenary, but even at this stage of second appeal, one vital document has still not been placed on record, even to try and lead additional evidence, that Ishwar was, in fact, the adopted son of Chhajju, as is stated in the mutation entry dated 28.12.1979 (Annexure A-5). Hence, simply on the basis of what is stated in the mutation register, without the adoption deed dated 11.05.1975 having been produced, it is not possible to hold that the father of the appellant was actually the adopted son of Chhajju, with the adoption being valid in terms of Sections 5 to 11 of the Hindu Adoption and Maintenance Act, 1956.

Hence, even if this Court may otherwise have been inclined to accept the additional evidence, subject to the contentions to be raised in that regard by the respondents, if notice were to be issued in this appeal and in the aforesaid application, yet, with even the basic document of adoption not having been even attempted to be led by way of additional evidence, at this stage of a second appeal, I find myself unable to accept the application seeking to lead additional evidence at this stage.

Moreover, evidence would still require to be led that (even if Ishwar were to be presumed to be an adopted son of Chhajju Ram), there was no legal necessity for Ishwar to have sold the suit land, vide the aforesaid

three sale-deeds, between the years 1998 to 2003.

No evidence at all having been led before the Courts below to disprove such legal necessity, though shown by the defendants by the testimony of DW3 in support of Ex.D3, as discussed by the Civil Judge, I see no reason to entertain the application for leading such additional evidence at this stage, which again is not complete, in the form of either the adoption deed, or with regard to proving that there was no legal necessity to sell the land.

Consequently, CM No.2915-C of 2016, seeking to lead additional evidence, is dismissed.

14. Having dismissed the above application for leading additional evidence for the reasons given hereinabove, there would in any case, be no ground left to entertain this appeal because with no documentary evidence having been led to show in the form of any FIR registered with regard to his misdeeds as a drunkard, or any medical evidence to show that he had ever been examined in that regard etc., or of unsoundness of mind under the influence of liquor, or even Ishwars' action to sell the suit land to satisfy his lust for liquor, the contention to that effect can also not be accepted.

15. However, as regards limitation, it is seen that the suit out of which this second appeal arises, was filed in the year 07.06.2011, seeking a declaration that sale deeds executed between 1998 to 2003 be declared to be null and void. To try and cover the period of limitation, the appellant-plaintiff had led by way of evidence, a report of the Civil Surgeon, Fatehabad, before the learned Courts below, to submit that he had attained

majority only about the year 2010, with the aforesaid report stating that in that year he was between 17-19 years of age. It is also seen that the appellant-plaintiff had admitted in his cross-examination, that he had been married 5 to 7 years prior to his date of deposition, and had also stated that he had gone to a private school, but with no school certificate produced (as stated in the judgment of the learned Civil Judge).

Despite the above, considering that the appellant is stated to be illiterate or only semi-illiterate, and being from a wholly rural background, it is possible that he may have got married, even against the provisions of law, at the age of 16 years or so. Therefore, in my opinion, the certificate of Civil Surgeon (Ex.P1), would need to be accepted, as regards the age of the appellant. The said certificate was issued by a public authority and was duly supported by the oral evidence of PW3, that evidence not having been dislodged by the respondents-defendants. Hence, it is held that the appellant was between 17 to 19 years of age as on the date of the issuance of the certificate on 22.02.2010 and as such, he having filed the suit on 07.06.2011, to claim what he perceived to be his right, the suit was filed within limitation, being within three years of the appellant-plaintiff having attained majority. Thus, the findings of both the Courts below on issue No.3, i.e. on the question of limitation, are reversed and that issue is decided in favour of the appellant-plaintiff.

16. Despite having held as above, in view of what has otherwise been discussed on the merits of the case as regards issues No.1 and 2, I find no error in the judgments of the Courts below, in holding that the impugned

sale deeds dated 28.08.1998, 20.05.1999 and 02.12.2003 cannot be declared to be illegal, null and void and consequently, the appellant-plaintiff cannot be declared to be the owner of the suit land, it not having been proved to be either ancestral property. Nor are the findings of the Courts below, on the sale deeds having been validly executed by the father of the appellant, in favour of the respondents-defendants, found to be erroneous in any manner.

17. Consequently, even while reversing the finding of the learned Courts below on issue No.3, finding no error otherwise in those judgments, on the merits of the case of the appellant-plaintiff, this appeal is dismissed, but with no order as to costs.

A decree-sheet be drawn up accordingly.

CM No.2914-C of 2016

As the appeal itself has been dismissed on merits, the question of condoning the delay in refiling the appeal is rendered academic and is not gone into.

July 27, 2016*vcgarg/dinesh***(AMOL RATTAN SINGH)
JUDGE**