

RSA No.4323 of 2013(O&M)

Date of Decision: 22.3.2016

Sheo Ram

---Appellant

versus

Rajaram and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sanjay Mittal, Advocate
for the appellant

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal lays challenge to the consistent findings recorded by the courts below whereby suit filed by Rajaram for specific performance qua 1/6th share of land measuring 235 kanala 9 marlas to the extent of 39 kanals 5 marlas situated in village Antri on the basis of agreement to sell dated 22.2.1999 by Ms. Phula Devi daughter of Sh. Mohabata for a sale consideration of Rs. 7.50,000/-, was decreed by the learned trial court and the judgment and decree passed by the trial court was affirmed in appeal by the Additional District Judge, Narnaul.

The sole submission made by counsel for the appellant Sheo Ram son of Mohabata and brother of Ms. Phula Devi is that Ms. Phula Devi inherited 1/18th share instead of 1/6th share out of land measuring 235 kanals 9 marlas, therefore, she was not competent to alienate the suit

land to the extent of $1/6^{\text{th}}$ share. In order to substantiate his contention, it has been urged that land measuring 235 kanals 9 marlas was joint Hindu family coparcenary property in the hands of Sh. Mohabata and on the basis of notional partition, Sh. Mohabata was entitled to $1/3^{\text{rd}}$ share to the extent of 79-80 kanals out of total land as the remaining land to the extent of $1/3^{\text{rd}}$ share each would go to Sheo Ram son of Mohabata and to the wife of Sh. Mohabata. It is further argued that $1/3^{\text{rd}}$ share of Sh. Mohabata was inherited by his five class-I heirs in view of Section 8 of the Hindu Succession Act, 1956 thus, Ms. Phula Devi was entitled to approximately 16 to 17 kanals of land when on the contrary, she entered into agreement of sale qua land measuring 39 kanals 5 marlas, more than her entitlement.

I have heard counsel for the appellant, perused the records particularly the judgments passed by the courts below.

On a specific query raised by the Court as to the evidence available on record to substantiate contention of the appellant that suit land was joint Hindu family coparcenary property, counsel would inform that the said plea is based upon mutation sanctioned in favour of Sh. Maohabata on the demise of his father Sh. Sewela thus it was ancestral property in the hands of Sh. Mohabata.

To prove any property to be joint Hindu family coparcenary, the party claiming as such has to prove that it was inherited from father, father's father and father's father's father without intervention of a female in the chain. As the appellant failed to prove that land in the hands of Sewela was inherited by him from his father and his father inherited it from his

(Sewela's) grand father, contentions raised by the appellant are misconceived and merits rejection. That being so, neither any substantial question of law arises for determination nor any fault can be found in the findings of courts below.

Dismissed in limine.

(Rekha Mittal)
Judge

22.3.2016

PARAMJIT