

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-1846-2015 (O&M)

Date of decision: 16.02.2016

Suneel Kumar

...Appellant(s)

Versus

Amro and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Jagram Singh Cooner, Advocate,
for the appellant(s).

JITENDRA CHAUHAN, J.

CM-4952-53-2015

Keeping in view the circumstances explained in the applications, the same are allowed and delay in filing and re-filing the appeal is condoned.

RSA-1846-2015

The instant regular second appeal filed on behalf of the plaintiff lays challenge to the concurrent findings recorded by the learned Civil Judge (Junior Division), Panchkula (for short, 'the trial Court'), vide impugned judgment and decree dated 18.11.2011, and learned Additional District Judge, Panchkula (for

short, the first Appellate Court), vide impugned judgment and decree dated 18.09.2014.

The plaintiff filed suit for declaration to the effect that the land detailed in the head-note thereof is the ancestral coparcenary property of the plaintiff and defendant No.11 and that defendant Nos.9 and 10 have no right, title or interest therein. Further, declaration is sought to the effect that the sale deeds/alienations made in respect of the suit land are illegal, null and void ab initio, on the ground that the suit land is the ancestral/co-parcenary property of the plaintiff and his great grandfather, namely, Dheeru, its original owner, who had inherited the same from his father. After the death of Dheeru, the suit land was inherited by his son, namely, Santu and thereafter by defendant No.11, the father of the plaintiff. It was averred that on the death of Santu, defendant Nos.9 and 10 did not actually inherit any share in the suit land and entry in their name in the revenue record is a result of fraud and mis-representation. In order to deprive the plaintiff of his right, the suit land was sold/alienated by different defendants vide several sale deeds.

The civil suit was contested by the defendants on the ground that Santu was the absolute owner in possession of the suit land, being his self acquired property. After his death, it devolved

upon defendant Nos.9 to 11, in equal shares, being his wife and two sons, respectively. Defendant Nos.1 to 4 were bona fide purchasers against consideration. Therefore, their rights were protected under the Transfer of Property Act. Defendant Nos.5, 5-A, 5-B, 5-C, 6 to 9 were proceeded against ex parte, whereas, defendant Nos.10 and 11, vide their separate written statement, admitted the claim of the plaintiff and prayed for decreeing the suit, though, subsequently, they chose not to appear and were proceeded against ex parte.

Upon framing of issues on 26.05.2008, the learned trial Court returned issue-wise findings. While deciding issue No.1 i.e. “Whether the plaintiff is entitled to the relief of permanent injunction and declaration as prayed for? OPP”, it was held that the present suit was filed by the plaintiff in collusion with his father, who had already lost the litigation qua the suit land in the year 2005. The plaintiff had no right in the property inherited by defendant Nos.9 and 10 and he could claim his share only in the property inherited by his father, defendant No.11. After the death of her husband, Santu, defendant No.9 became absolute owner to the extent of 1/3rd share. The argument of her getting re-married was also considered and decided in her favour in the earlier suit filed by the father of the plaintiff. Similarly, other issues were also

decided against the plaintiff and in favour of the defendants.

The learned first Appellate Court also dismissed the appeal of the plaintiff by holding that the alienation in favour of the contesting respondents is well protected under Section 41 of the Transfer of Property Act, 1882 as respondent No.11 consented to the alienation of property by respondent No.1 by way of sale deed Ex.D2.

Hence the present appeal.

The learned counsel for the appellant contends that the plaintiff-appellant has an independent share in the property of Santu, being his grandson. The decision in the earlier suit is not binding as he was not a party in the earlier suit.

I have heard learned counsel for the appellant and gone through the record.

The father of the plaintiff filed civil suit with regard to the same property, which was dismissed vide judgment and decree dated 22.11.2005, Ex.D1. The appeal therefrom was also dismissed by judgment and decree dated 17.11.2008, Ex.D9. No further appeal was preferred by the plaintiff, Het Ram, in the earlier suit. The appellant-plaintiff herein is the son of Het Ram. Thus, the matter has already attained finality. From the evidence on record, the collusion between the plaintiff and his father, Het Ram,

the plaintiff in the earlier suit, is clearly made out. The learned Courts below have recorded a categorical finding that the property in dispute was the self acquired property of Santu and after his death, defendant-respondent No.9, being his wife, became the absolute owner to the extent of 1/3rd share. The learned counsel for the appellant has failed to point out any illegality or perversity with regard to the findings recorded by the learned Courts below, which may warrant interference by this Court.

No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

16.02.2016
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(JITENDRA CHAUHAN)
JUDGE