

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.892 of 2013 (O&M)
Date of decision:02.05.2016

Dalip Chand (deceased) through LR's and others ... Appellants

Vs.

Dev Raj and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. S.K.Pipat, Senior Advocate with
Mr. M.K.Pundhir, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-plaintiffs are aggrieved of the dismissal of the suit seeking following relief:-

“Suit for declaration to the effect that plaintiffs Dalip Chand and Rattan Chand are owners and in possession of the land called Hazare Wala land comprising in Khewat/Khatauni 362/404, Khasra No.10//21/1(1-18), 21/2 (5-8), 20/2(4-13), 11//16/2 (0-19), 25/3 (1-12) total area 7 Kanals 5 Marlas out of 14 Kanals 10 Marla 1/2 of it belonging to Babu Ram brother of Dev Raj mentioned in Schedule A of the plaint Dalip Chand plaintiff alone is in possession of 1 Kanals area of the land as owner in

Khewat/Khatauni No.361/404, Khasra No.34//1/1(0-6), 1/2(0-18), 10/1(2-12) 10/2 (1-8), 10/3 (1-4), 10/4 (1-8), 10/5 (1-8), 11/1 (0-16), 11/2 (0-9), 11/3 (1-13), 35//5/2 (1-16), 6/1 (0-10), total area 14 Kanals 8 Marlas called Ghasaran Wala out of which 1/2 share is owned and possessed by Babu Ram and other 1/2 share is written in the name of Dev Raj.

And

Kishan Chand plaintiff is the owner and in possession of Kh/Khatauni No.361/404 Khasra No.80//16/2(6-11) 25/1 (3-8) total area 9 Kanals 19 Marlas out of which 1/2 share belongs to Babu Ram and other half is in the name of Dev Raj mentioned in Schedule C of the plaint which is called Bangar Wala in the village.

And

Kishan Chand and Rattan Chand are also owners in possession of 3-1/2 marla on southern side of the western part of Khewat/Khatauni No.361/404 Khasra No.300/1(0-4) as this Khasra number consist of 14 marla 1/2 on eastern side of this Khasra No is with Babu Ram and out of this Southern side of western side of Khasra Number 3-1/2 marla is given to Rattan Chand and the remaining 3-1/2 marla is given to Kashmir Singh defendant on northern side and they are as such in

possession as owners in Schedule D of the plaint which is shown as memorandum of family settlement Dt. 14.6.2001 as Khasra number 299 where all the three i.e. Rattan Chand, Kishan Chand and Kashmir Singh have built their house and are living there.

And

The plaintiff and defendants No.1 and 2 have kept common Khewat/Khatauni No.361/404 Khasra No.7//24 (7-11), Khewat/ Khatauni No.362/405 Khasra No.6//17(7-11), 6//24 (8-0) known as Tirak Wala out of which 1/2 belongs to Babu Ram and other 1/2 is in possession plaintiff and defendant No.1 and 2 as owners which are shown in Schedule E along with it well situated in Kh/Kh No.363/406 Khasra No.35//26 (0-5) being 1/8th share of Dev Raj mentioned in record and Kh/Kh No.299/336 Khasra No.300 (0-12) being 1/7th share which is purchased out of Joint Hindu Family funds contributed by the plaintiff and the defendant No.1 and 2 but sale deed recorded in the name of the defendant No.3 and 4 who has no separate right.

And

The defendants Dev Raj and Kashmir Singh are in possession of Khewat/Khatauni No.361/407 measuring 6 Kanals 4 marlas Khasra No.34//1/1(0-6), 1/2 (0-18), 10/1

(2-12) 10/2 (1-8), 10/3 (1-4), 10/4 (1-8), 10/5(1-8), 11/1 (0-16), 11/2 (0-9), 11/3 (1-13), 35//5/2 (1-16), 6/1 (0-10), total area 14 Kanals 8 Marlas out of it 1/2 belong to Babu Ram and other half 1 Kanals is in the ownership and possession of Dalip Chand as mentioned in Schedule B mentioned above and remaining 6 Kanals 4 Marla is with defendants No.1 and 2 on the basis of family settlement dt. 14.6.2001 about the total land recorded in memorandum dt.14.6.2001 in the name of defendant No.1 is divided as mentioned above as such the parties are bound by the conditions mentioned in memorandum of family settlement dated 14.6.2001 in which parties have accepted and agreed to comply with the conditions mentioned therein, in which it is also recorded that after the death of Dev Raj defendant No.1 the property given to Dev Raj with Kashmir Singh in the compromise will be divided by 4 brothers equally and that they will comply with the other conditions mentioned therein further it has been agreed by Dev Raj that he will not alienate any portion of the property mentioned above so the alleged sale deed dated 22.1.2002 and gift deed in favour of the defendant No.3 and 4 by Dev Raj are void not binding on the rights of the plaintiff and the plaintiff and the defendant also complied with family agreement and took

possession of the same separately and built houses therein as such. As a consequential relief the defendants No.1 to 4 be restrained from ejecting the plaintiff forcibly and their tenant i.e. Defendants No.5 to 7 namely Bachna Ram, Nazar Singh from the land mentioned above nor the defendant No.1 to 4 will alienate any portion of the property belonging to plaintiff No.1 to 3 and the defendant No.1 as mentioned above and also for declaration that the News and sale given by Dev Raj in Amar Ujala dt. 21.10.2001 by which he is said to have published that he had disinherited the plaintiff is null and void without jurisdiction and authority not binding upon the plaintiff and the sale alleged to have been made by the defendant No.1 in favour of the defendant No.3 and 4 is null and void and is without consideration being illegal and malafide and against the family settlement mentioned above the whole property being joint family Hindu coparcenary property. The alleged sale and gift in favour of defendants No.3 and 4 are also void and not binding on the rights of the plaintiff. In the alternative suit for joint possession of the land mentioned above.”

As a consequential relief, the defendants were sought to be restrained from ejecting the plaintiffs and their tenants forcibly from the property belonging to plaintiff Nos.1 to 3 and also for

declaration.

Mr. S.K.Pipat, learned Senior Counsel assisted by Mr.M.K.Pundhir, Advocate appearing on behalf of the appellant-plaintiffs submits that during the pendency of the suit, vide Ex.P4, pedigree table was placed on record to show that property at the hands of Dev Raj, father of the plaintiffs, was ancestral in nature who inherited from his forefathers. The pedigree table shows two generations preceding to Dev Raj and not three and therefore, vide additional evidence, aforementioned documents are being sought to be placed on record along with other documents to show that two alleged sale deeds dated 13.06.2001 and 22.01.2002 executed in favour of defendant No.2 and gift deed dated 22.01.2002 were not for legal necessity. In fact, the property at the hands of Dev Raj was ancestral in nature and therefore, the plaintiffs could not have been disinherited. umpteen number of documents have been placed on record to show the property as ancestral in nature. He further submits that declaration qua setting aside of the publication caused in the newspaper, namely, 'Amar Ujala' on 21.10.2001 disinheriting the plaintiffs qua three sons is also illegal, null and void. At the best, he could have bequeathed the property by way of Will and through Court decree. There are other properties also as reflected in the sale deeds and jamabandies, thus, findings rendered by both the Courts below are illegal and perverse, much less, there is illegality and perversity and substantial questions of law arise for adjudication of

the present appeal.

I have heard learned counsel for the appellant-plaintiffs and appraised the impugned judgments and decrees of the Courts below and of the view that appellant-plaintiffs have failed to prove the character and nature of the property being part of the aforementioned gift and sale deeds arising out of the joint khata. Khasra numbers, sale deeds and gift deed are not reflected in the jamabandi to show that appellant-plaintiffs had right in the same by birth and coparcenary property at the hands of Dev Raj, and, therefore, rightly so, the Courts below declined the relief.

As regards declining of relief qua declaration of disinheritance by way of publication, I am of the view that this is not the manner and mode by which a person can be disinherited as there are other sons also. At the best, property can be bequeathed by way of executing a Will and through Court decree. It has been brought to the notice of the Court by learned Senior counsel for the appellant-plaintiffs that Dev Raj died intestate and therefore, there are other properties, on which the plaintiffs and their children would have some right as per the natural succession and therefore, disinheritance as noticed above, would not come in their way. I am in agreement with the submission of Mr. Pipat, for the reasons that disinheritance cannot be done by causing a publication and hereby expunged. Vis-a-vis declaration claiming the nature of the property being ancestral and coparcenary, the findings rendered by the Courts below are

upheld/affirmed. However, declining of relief qua declaration with regard to the self-acquisition of property at the hands of Dev Raj would not come in the way of appellant-plaintiffs, who have some right, in case it exists or available in law by way of natural succession.

With the aforementioned observations, the judgments and decrees of the both the Courts below are affirmed, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

The appellant-plaintiffs are at liberty to move an appropriate application for impleading LR's of Dev Raj-respondent No.1, at appropriate stage.

(AMIT RAWAL)
JUDGE

May 02, 2016

savita