

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3732 of 2016

Date of Decision: November 11, 2016

Smt.Davinder Kaur

...Appellant

Versus

Harmohinder Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.K.S.Sidhu, Senior Advocate with
Mr.M.S.Brar, Advocate,
for the appellant.

AMIT RAWAL, J.

Appellant-plaintiff No.1 is aggrieved of the dismissal of the suit seeking declaration that plaintiffs along with defendants are owners in equal share of the suit land and the sale deeds dated 27.3.2002, 10.9.2003 and 26.5.1998 in favour of defendant Nos.1 and 2 being sham and illegal transaction with a consequential relief of possession of 2/5th share being owner of the property and also injunction qua restraining them from alienating the property.

Mr.K.S.Sidhu, learned Senior Counsel assisted by Mr.M.S.Brar, learned counsel for appellant-plaintiff No.1 submits that the suit, aforementioned, was filed on the premise that mother of the parties Ram Piari had died on 12.8.2005, whereas the father of the plaintiffs died on 24.12.2004 leaving behind three sons, namely, Harmohinder Singh, Surinder Singh and Gurdev Singh and two daughters, namely, Sukhwinder Kaur and Davinder Kaur-plaintiff. He submits that defendant Nos.1 and 2

had played a fraud and misrepresentation upon the father of the plaintiffs late Jangir Singh and transferred the suit land vide aforementioned sale deeds without any sale consideration. The sale deeds were result of fraud and misrepresentation, much less fictitious one. The plaintiffs requested the defendants to rectify the aforementioned defect regarding the inheritance of Jangir Singh by way of cancellation of the impugned sale deed, but having failed to do so, the aforementioned suit was filed. The Courts below have dismissed the suit by ignoring the fact that convincing and cogent evidence had been led that the property was purchased by Jangir Singh out of the income of the ancestral land and a fraud and misrepresentation has been played upon him. Even DW-3 Surinder Singh admitted that there is no proof that sale consideration was passed on to late Jangir Singh, thus, the defendants have failed to prove that any amount was paid to Jangir Singh and, thus, urges this Court for setting-aside the judgments and decrees under challenge.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book.

The suit challenging the aforementioned sale deeds has been filed only on 15.6.2007, whereas Jangir Singh died on 24.12.2004 and he, all his life time, did not challenge the aforementioned sale deeds. No fraud and misrepresentation has been played upon, as the plaintiffs have miserably failed to prove the ingredients of fraud and misrepresentation having played upon Jangir Singh. Registered document carries a presumption of truth and having failed to lead evidence as per provisions of Section 101 of the Indian Evidence Act, I am of the view that the appellant has miserably failed to prove the ingredients of Order 6 Rule 4 CPC.

Plaintiffs have also failed to prove the character and nature of the property being ancestral and, therefore, they have no right to claim the share in the property. Even otherwise, if the property was ancestral till, 2005, the married daughters had no right. On the contrary, the defendants have examined the marginal witness of the sale deeds, who proved the execution of the sale deeds to the hilt.

For the foregoing reasons, I do not intend to differ with the concurrent findings of the Courts below, which are based on appreciation of oral and documentary evidence, much less no substantial question of law arises for determination. No case for interference is made out.

Appeal stands dismissed.

November 11, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No