

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

**R.S.A No.3384 of 2015 (O&M)
Date of decision :01.09.2016**

Manoj Kumar

..... Appellant

Versus

Pyare Lal Sanga through LRs. Manoj Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. A.P.Kaushal, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 21.05.2015 passed by the learned Additional District Judge, Panchkula, whereby the appeal filed by appellant-plaintiff Manoj Kumar against the judgment and decree dated 23.04.2013 passed by the learned Additional Civil Judge (Sr. Division), Kalka, has been dismissed.

2. Appellant-plaintiff has brought the suit for declaration to the effect that the sale deed dated 03.11.2006 executed by defendant no.1 (deceased-respondent no.1- Pyare Lal Sanga) in favour of respondents-defendants no.2 and 3 in respect of the house marked 'ABCD' in the site plan attached with the plaint situated on the land bearing Khewat/Khatauni No. 69/70, Khasra No. 612/43 measuring (0-3) Marlas situated in Private colony, Surajpur is illegal, null and void, without

consideration and is not a genuine document in the eyes of law and the same is not binding on the rights of the plaintiff and is liable to be set aside/cancelled as the plaintiff along with other coparceners are in joint possession of the aforesaid house. Appellant-plaintiff has also sought the relief of permanent injunction restraining defendants no.2 and 3 from alienating the house in dispute in any manner and dispossessing the plaintiff there from.

3. As per the averments in the plaint, plaintiff along with his three brothers, father and mother constituted a Joint Hindu Family governed by Mitakshra School of Hindu Law. The suit property was purchased in the name of defendant no.1 from the common family funds as defendant no.1 was acting as a Karta of the family. The relations of defendant no.1 and his wife namely Krishna Devi got strained and they started residing separately in the same house in different portions. Plaintiff and his family members are in possession of the suit property over the portion shown by letters 'ACEF' in the site plan attached with the plaint. Defendant no.1 has illegally sold the suit property to defendants no.2 and 3 vide sale deed dated 03.11.2006. The said sale deed has been executed by defendant no.1 without any legal necessity and without seeking the prior permission of other coparceners having a birth right over the suit property. The suit property was ancestral in the hands of defendant no.1 and he has no right to alienate the same in favour of defendants no.2 and 3 without having any legal necessity. Hence the suit.

4. Defendants contested the suit by filing the separate written statements. Defendant no.1, the father of appellant contested the suit on

the grounds *inter alia* that he has purchased the suit property in his lifetime in the year 1962 from his own funds and he had sold the same to defendants no.2 and 3. He further denied that plaintiff is in possession of any portion of the suit property.

5. Respondents-defendants no.2 and 3 filed the joint written statement. They also denied that the suit property was purchased by defendant no.1 from the joint family funds and further submitted that they are in possession of the suit property. They denied Krishna is having possession over any portion of the suit property under any settlement. The sale deed dated 03.11.2006 has been executed by defendant no.1 after receiving the sale consideration of Rs. 4 lacs. With these pleas they pleaded for dismissal of the suit.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 11.02.2010:-

1. Whether the plaintiff is entitled for the decrees of declaration to the effect that the sale deed dated 03.11.2006 bearing no. 1874 executed by defendant no.1 in favour of defendants no.2 and 3 and registered in the office of Sub-Registrar, Kalka, in respect of the house constructed marked as ABCD in the attached site plan is illegal, null and void, ineffective, inoperative without consideration and jurisdiction and the same is a sham transaction and the same does not confer any right, title or interest upon defendants no.2 and 3 and is liable to be set aside/canceled?OPP
2. Whether the plaintiff along with other coparceners are in joint possession of the aforesaid house?OPP
3. Whether the plaintiff is entitled for the decree of permanent injunction restraining the defendant no.2 and 3 from alienating house and interfering into peaceful ownership and possession of the plaintiff and from dispossessing the plaintiff over the portion of the house shown in red colour in the site plan?OPP
4. Whether the suit of the plaintiffs is not maintainable and the plaintiff have no locus standi to file the present suit?OPD
5. Whether the plaintiffs are not estopped by their own act and conduct?OPD
6. Whether no cause of action has arisen in favour of the plaintiff?OPD
7. Whether the suit of the plaintiff is bad for non joinder of the necessary parties?OPD

8. Whether the suit has not been properly valued for the purpose of court fee on the plaint?OPD
9. Relief.

7. On appreciating the evidence adduced by the parties and the contentions raised by learned counsel for the parties, the learned trial Court dismissed vide impugned judgment and decree dated 23.04.2013.

8. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff preferred the appeal. The same has also been dismissed by the learned First Appellate Court vide impugned judgment and decree dated 21.05.2015. Hence this Regular Second Appeal.

9. I have heard Mr. A.P.Kaushal, Advocate, learned counsel for the appellant and have meticulously gone through the record of the case.

10. Initiating the arguments, learned counsel for the appellant contended that appellant-plaintiff, his father-Pyare Lal, his three brothers and mother constituted the Joint Hindu Family. He further contended that the suit property was ancestral and coparcenary property in the hands of respondent-defendant no.1-Pyare Lal. The said property was purchased by the grandfather of the plaintiff in the name of defendant no.1-Pyare Lal. Thus, he contended that defendant no.1 was not competent to alienate the same without any legal necessity. He contended that defendants have not been able to establish any legal necessity to defendant no.1 for alienating the house in dispute. Thus, he contended that the sale deed dated 03.11.2006 executed by defendant no.1 in favour of defendants no.2 and 3 being without any legal necessity is illegal and liable to be set aside.

11. He further contended that the plaintiff is in possession of the

portion ACEF shown in the site plan along with his family members. So, he is in joint possession of the suit property and is entitled for injunction. Thus, he contended that the learned Courts below have wrongly dismissed the suit of the plaintiffs.

12. I have duly considered the aforesaid contentions.

13. Appellant-plaintiff Manoj Kumar has alleged that he along with his father, three brothers and mother constituted the Joint Hindu Family and the house in dispute is their ancestral and coparcenary property. The sale deed dated 03.11.2006 executed by defendant no.1 in favour of defendant no.2 is illegal, being without any legal necessity. He also claimed to be in joint possession of the suit property in the portion of the house in dispute. In order to succeed, it was incumbent upon the appellant-plaintiff to establish that the house in dispute was ancestral and coparcenary property in the hands of his father-Pyare Lal-defendant no.1. It is the admitted case of the appellant-plaintiff that the house in dispute was purchased in the name of his father, but it is alleged that it was purchased from the common funds of the Joint Hindu Family. Even otherwise, from the documents available on record, it is proved that deceased-Pyare Lal has purchased the property in dispute. Ex.D-8 is the mutation no. 349 which has been entered and sanctioned on the basis of the sale deed dated 13.03.1962, which shows that earlier one Chajju was the owner of the suit property and the ownership thereof was transferred in favour of defendant no.1 on the basis of sale deed dated 13.03.1962.

14. No documentary evidence has been brought on record by the plaintiff to show that he or any other member of the family has

contributed any funds in the purchase of the house in dispute. Rather, in the cross-examination he has admitted that he was born in the year 1971. So, he was not even born when the suit property was purchased by respondent-defendant no.1-Pyare Lal. From the admissions of the plaintiff in the cross-examination even the existence of the Joint Hindu Family is not established. He has admitted in the cross-examination that he is residing separate from his father after his marriage. Once he has admitted that he was living separate from his father since the date of his marriage, then where is the question of his constituting the Joint Hindu Family with his father.

14. Learned trial Court has rightly observed that plaintiff-Manoj Kumar while stepping into the witness box as PW-1 and his mother Krishna Devi while appearing in the witness box as PW-2 have admitted that the suit property was purchased by defendant no.1 in the year 1960-61. The house in dispute was also constructed by defendant no.1 in his lifetime.

15. The plea raised by learned counsel for the appellant that the house in dispute was purchased by the grandfather of the plaintiff in the name of his father is totally beyond pleadings. It is settled principle of law that any plea beyond pleading deserves to be rejected. Moreover, no documentary evidence has been brought on record by the appellant-plaintiff to establish that the house in dispute was purchased by his grandfather in the name of his father. Mere oral assertion in his testimony will not establish this fact. He has not been able to tell in the cross-examination as to what his grandfather was doing. He has not deposed

anything about the source of income of his grandfather.

16. Thus, the learned Courts below on the correct appreciation of evidence had rightly concluded that the suit property was purchased by respondent-defendant no.-1 Pyare Lal from his own source, which falls in the category of his self acquired property and the plaintiff has failed to establish that the suit property was ancestral and coparcenary property in the hands of respondent-defendant no.1. Appellant-plaintiff has also not been able to establish that he constituted any Joint Hindu Family with his father as it is the admitted case of the plaintiff that his father-respondent no.1 and his mother were residing separate. They were having civil as well as criminal litigation. Appellant has also admitted that he was residing separate from his father since the date of his marriage.

17. Once the plaintiff has failed to establish that the house in dispute was ancestral and coparcenary property in the hands of respondent-defendant no.1-Pyare Lal, he being the absolute owner had every right to alienate the same in any manner he likes and appellant-plaintiff has no *locus standi* to challenge the said alienation on the ground of legal necessity.

18. The whole case of the plaintiff-appellant is based on the site plan Ex.P-1. The said site plan is not proved in accordance with law as the draftsmen who has prepared the same has not been examined. Plaintiff has also admitted in the cross-examination that the said draftsmen has not visited the spot before preparing the site plan. So, no authenticity can be attached to the site plan Ex.P-1 and the portions shown therein. Appellant-plaintiff could not show any right, title or

interest in the suit property. So, he also had no right of injunction against the true owners.

19. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

20. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

21. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

September 01, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No