

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

RSA No.4001 of 2015 (O&M)

Date of decision : 11.01.2016

Yogesh Gupta & another

.....Appellants

Versus

Prem Chand Saini

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Sudhir Aggarwal, Advocate for appellants.

DARSHAN SINGH, J.

The present regular second appeal has been preferred against the judgment and decree dated 16.03.2015 passed by learned Additional District Judge, Gurgaon, vide which the appeal preferred by the appellants-plaintiffs against the judgment and decree dated 30.04.2014, passed by learned Civil Judge (Junior Division), Gurgaon was dismissed.

2. As per the case of the plaintiffs-appellants, they are the son and daughter, respectively of alienor Suresh Chand Gupta. They claimed themselves to be descendents of Suresh Chand Gupta. Said

Suresh Chand Gupta has alienated the shop comprised in rectangle No.508/2 Min measuring 16.88 square yards (162 square feet) comprising in Khasra No.13426/4246/1767, 13428/4246/1767 situated at Gurgaon – Mehrauli Road, Gurgaon, vide registered sale deed dated 17.10.2008. The appellants-plaintiffs pleaded that the said sale deed executed by their father in favour of the defendant is illegal, null & void. The shop in question was ancestral and co-parcenary property of plaintiffs. The same has been alienated at ostensible price, without any legal necessity. Hence, they filed the suit for grant of decree for declaration for setting aside the impugned sale deed being illegal, null & void for want of legal necessity. In the consequential relief, they sought decree for permanent injunction restraining the defendants from interfering, alienating or creating any sort of encumbrances over the shop in dispute and he be restrained from interfering in the peaceful possession of the plaintiff thereupon.

3. The defendant contested the suit on the grounds inter alia that the shop in dispute was not the co-parcenary and ancestral property. The alienor had legal necessity to sell the shop in dispute as he was indebted to Gurgaon District Primary and Rural Development Bank Ltd. Branch Gurgaon from which he had obtained a loan and on the very next day of execution of the sale deed, he has deposited a sum of Rs.2,86,875/- in his personal loan account on 18.10.2008 and a sum of Rs.2,96,765/- in the loan account of his son Jitender. It was further pleaded that after receiving the sale consideration, the physical possession of the shop in dispute was delivered to the defendant. The factum of existence of the joint Hindu family was also refuted. The defendant-respondent also

raised certain legal and preliminary objections. From the pleadings of the parties, the following issues were framed by the learned trial court vide order dated 05.03.2013:-

1. Whether the plaintiffs are entitled to a decree for declaration with consequential relief of permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the plaintiff has concealed the true and material facts from this court? OPD
4. Whether the plaintiff has no cause of action and no locus standi to file the present suit? OPD
5. Whether the plaintiff is stopped from filing the present suit by their own act, conduct, acquiescence, laches, omission and commission etc? OPD
6. Relief.

4. The learned trial court returned the findings on issue No.1 against the plaintiffs while issues No.2 to 5 against the defendant and ultimately suit filed by the appellants was dismissed.

5. Aggrieved with the aforesaid judgment and decree dated 30.4.2014 passed by learned trial court, the appellants preferred the appeal. The same was also dismissed by the learned first appellate court vide impugned judgment and decree dated 16.03.2015.

6. I have heard Mr. Sudhir Aggarwal, Advocate, learned counsel for the appellant and carefully gone through the paper-book.

7. Learned counsel for the appellants contended that the shop in dispute was ancestral and co-parcenary property of the appellants, in which they had acquired the rights by birth. Their father Suresh Chand Gupta had alienated the said shop without any legal necessity for

ostensible sale price of Rs.6,26,000/- a meager amount keeping in view the fact that it was a commercial property. Thus, he pleaded that the impugned sale deed was null & void being without any legal necessity.

8. I have duly considered the aforesaid contentions raised by learned counsel for the appellants.

9. The entire case of the appellants is based on the plea that the shop in dispute was ancestral and co-parcenary property in the hands of their father in which they had acquired the right by birth and consequently they have challenged the alienation of the shop in question on the ground that the said alienation was without any legal necessity. Thus, it was incumbent upon the appellants to establish that the disputed property was ancestral and co-parcenary property in the hands of their father Suresh Chand Gupta.

10. It is settled principle of law that in order to establish the suit property to be ancestral the appellants were required to show that their father had obtained the shop in dispute by way of inheritance from his father and father's father but the material placed on record totally negates the plea of the appellant with respect to the ancestral nature of the disputed property. The learned first appellate court has discussed the evidence on this issue brought on record. It has been pointed out that mutation Ex.P2 shows that the land measuring 3 bigha 10 biswa which included the shop in dispute was owned by Ramji Lal grandfather of the appellants to the extent of ½ share. He died on 6.5.1979 and before his death, he executed a Will in favour of his widow Bhagwati Devi. On the basis of said Will, the suit property was mutated in favour of Smt.

Bhagwati Devi, the mother of Suresh Chand Gupta, the alienor. Mutation Ex.P3 depicts that after the demise of said Bhagwati Devi on 21.6.1986, the suit property was bequeathed in favour of alienor Suresh Chand Gupta and his two brothers Nemi Chand and Trilok Chand by way of Will dated 10.6.1986 executed by Smt. Bhagwati. The copy of mutation Ex.P4 further shows that said property was partitioned with other co-owners, which took place on the basis of decree in civil suit No.374 of 1986 decided on 19.1.1987. Thereafter, Suresh Chand Gupta became the absolute owner. Consequently, there is no escape from the conclusion that said shop in dispute came to the share of the father of the appellants by dint of the Will and subsequent partition. So, it becomes his self acquired property and the plea raised by the appellants that the shop in dispute was ancestral and co-parcenary property in the hands of their father is not at all established.

11. Once it is established that the shop in dispute was not the ancestral and co-parcenary property of the appellants and the same was self-acquired of the alienor, the appellants have no right to challenge the alienation thereof on the ground of legal necessity. Moreover, this fact is not disputed that on the very next date of the execution of the impugned sale deed the alienor has cleared the loan of the bank by depositing the outstanding loan amount in his loan account as well as in the loan account of his son Jitender, which is borne out from the bank record Ex.D7 to Ex.D9. So, it cannot be stated that the alienation was without any legal necessity. Consequently, I do not find any perversity in the concurrent findings of the facts by both the learned courts below.

12. Thus, no question of law, much less the substantial question of law, arises in this regular second appeal as claimed by the appellants inviting the interference by this Court.

13. Consequently, the present appeal being devoid of merits, is hereby dismissed in limine.

14. However, no order as to costs.

11.01.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**