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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-6354-2016 (O&M)
Date of decision : 08.12.2016

Joginder Singh and others

... Appellants

Versus

Hari Singh (deceased through LRs) and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Abhijeet Pratap Singh Chaudhary, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact and law, whereby the suit seeking following relief has been dismissed by both the Courts below:

“Suit for Declaration to the effect that the plaintiffs no. 1 to 3 & 6 & 7 and defendants are joint owners in actual and physical joint possession to the extent of equal 1/8th share each and plaintiffs no. 4 & 5 are joint owners of one share in the following land :- 81 Kanals – 15 Marlas bifurcated as :- (a) 28 Kanals – 9 Marlas, comprised of Khata no.220/245, Khasra Nos. 44/10, 107//2/2, 3, 4, 8, 9. (b) 3 Kanals - 5 Marlas, comprised of Khata no. 343/372, Khasra No. 44//12, 59//3/1, 821; (c) 50 Kanals – 1 Marlas comprised of Khata No. 374/407, Khasra Nos. 43//16, 44//18, 19, 20, 22, 59//1/2, 2, 10, vide jamabandi of years 2000-2001; situated at village Ramgarh Sardaran, Sub Tehsil Malaud, Distt. Ludhiana.

AND

Suit for declaration to the effect that the alleged transfer deed

dated 28- 11-2005, registered same day vide Vasika No. 1108, with Joint Sub Registrar, Malaud, executed by defendant no.1 in favour of defendant no. 2 & 3 allegedly transferred them land measuring 22 Kanals – 18 Marlas out of the above property and alleged mutation no. 5431 under consideration qua change of ownership of above said suit property under alleged transfer deed, are liable to be set aside being without any legal right, without any legal necessity and without any benefit of estate, without delivery of actual and physical possession to defendants no.2 & 3 by the defendant no. 1, alleged sale consideration being undervalued and thus the said transfer deed, is illegal, wanton, farce, capricious, null & void, sham transaction, inoperative and does not adversely affect legal rights of the plaintiffs in suit land and does not convey any right, title or interest in favour of defendants no. 2 & 3 being an act of misrepresentation and fraud played by defendants no. 2 & 3 in active abetment with each other to grab the valuable suit land to cheat the plaintiffs to cause them wrongful loss and to derive unto themselves wrongful gain, as the defendant no. 1 could not alienate any specific portion, specific khasra no. or more than his share in the joint un partitioned ancestral suit land as the plaintiffs & defendants are right over each and every inch of it.

AND

Suit for permanent injunction restraining defendant no. 1 from it any manner, himself or through his agents, servants, attorneys and relations etc. alienating rest of suit property by way of sale, gift, lease, let, exchange and transfer etc., and restraining the defendants no. 2 & 3 from alienating the land under the transfer deed to any one and further restraining the defendants from dispossessing the plaintiffs from or interfering in their actual and physical possession over suit land, in unauthorized, forcible and illegal manner to disparity, acerbity of the plaintiffs, on the basis of oral and documentary

evidence.”

Mr. Abhijeet Pratap Singh Chaudhary, learned counsel appearing on behalf of the appellants-plaintiffs submits that the property at the hands of Hari Singh was ancestral and therefore, he could not have executed a transfer deed dated 28.11.2005 in favour of defendant Nos.2 & 3, who are none-else, but the brothers of the plaintiff(s) and sons of Hari Singh. Hari Singh died in the year 2007, whereas the suit, aforementioned, was filed on 16.12.2005. The documentary evidence referred to in para 5 of the judgment of the trial Court brought on record leads to an irresistible conclusion that the property was ancestral in nature, but the Courts below have discarded the aforementioned evidence. Three generations have been proved to the hilt and therefore, the plaintiff being 4th generation has a right by birth. Even the attesting witnesses of the transfer deed deposed that the property was under valued. The pre-consolidation record was not available and therefore, it was not possible to connect the property, but yet it has been proved on record proved through the excerpt. Even PW-1, Pawan Kumar, special kanungo, also deposed in the same lines. All these factors have been ignored by both the Courts below, thus, urges this Court for setting aside the concurrent findings of fact as there is a gross illegality and perversity.

I have heard the learned counsel for the appellants-plaintiffs and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Abhijeet Pratap Singh Chaudhary, for, PW-1, Pawan Kumar, special kanungo, in the cross-examination admitted that he did not know Urdu language, though the excerpt was in Urdu. He did not even tell as to when, Hari Singh inherited the property from Sahibditta and so on and so forth. The evidence noticed above by the

Courts below have not able to connect that the property had fallen from Giana to Hari Singh and therefore, the plaintiff being 4th generation can assert right by birth and challenge the transfer deed in case it being without any legal necessity. In the absence of the same, the Courts below have rightly held that the transfer deed was valid as Hari Singh, who was alive and read as defendant, admitted the same. In the absence of character and nature of the property being ancestral, the Courts below treated the same to be self-acquired, therefore, the plaintiff would not have any right in the aforementioned property. All these factors have been taken care of by both the Courts below while dismissing the suit.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

08.12.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No