

In the High Court of Punjab and Haryana at Chandigarh

RSA No.4971 of 2015(O&M)

Date of Decision: 14.1.2016

Salochna

---Appellant

versus

Digamber Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Rajesh Lamba, Advocate
for the appellant**

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

Rekha Mittal, J.

The present regular second appeal has been directed against the judgment and decree dated 17.7.2015 passed by the District Judge, Palwal whereby the appeal preferred by the appellant-defendant against the judgment and decree dated 24.2.2014 passed by the trial court has been dismissed and concurrent findings of fact have been recorded by the courts below in favour of the respondents-plaintiffs.

The facts relevant for disposal of the present appeal are that the respondents-plaintiffs filed a suit for declaration and permanent injunction on the premise that they formed a joint Hindu family with their father Sher Singh son of Pitamber. The entire suit property was ancestral joint Hindu family coparcenary property of the respondents and Sher Singh and it was

so held in civil suit No. 855 of 1982 decided on 24.9.1984 by the Sub Judge Ist Class, Palwal, The aforesaid judgment and decree was affirmed in appeal No. 202 of 12.10.1984 titled “ Sher Singh vs. Digamber Singh” decided on 6.4.1985. Sher Singh executed two sale deeds bearing Nos. 3121 and 3122 dated 7.7.2008 in favour of Smt. Salochna (appellant, sister in law of Sher Singh). It is averred that Sher Singh had no right to alienate the suit property without any legal necessity and consideration. The impugned sale deeds do not confer any title in favour of the appellant.

The appellant-defendant filed the written statement seriously contesting the claim of the respondents. It was claimed that the suit property was not ancestral in nature and was self acquired property of Sher Singh. Another plea raised is that the appellant was a bona fide purchaser for consideration and the respondents have no right, title or interest in the suit property.

The learned trial court in view of its findings on issues No. 1 and 2 that the suit property was joint Hindu family coparcenary property of respondents and Sher Singh decreed the suit of the respondents and the impugned sale deeds bearing Nos. 3121 and 3122 dated 7.7.2008 were held to be illegal, null and void, not binding upon the rights of the respondents and ordered to be set aside. The findings recorded by the trial court were affirmed in appeal preferred by appellant Salochna with the observations that there is no valid reason to differ with the findings returned by the learned trial court.

Still feeling dissatisfied, the present regular second appeal has been preferred by Smt. Salochana.

Learned counsel for the appellant has assailed the judgments of the courts below primarily on the ground that the appellant is a bona fide purchaser for consideration. In addition, it is submitted that Sher Singh alienated the suit property by way of sale deeds in question for legal necessity, therefore, even if the suit property was joint Hindu family coparcenary property, the sale by Sher Singh cannot be faulted with. It is argued that the learned trial court did not frame an issue, if the sale of the suit property by Sher Singh is for legal necessity and consideration, thus depriving the appellant of her valuable right to adduce evidence in this regard and to counter the case of the respondents.

Counsel for the appellant has also made a half hearted attempt to argue that the respondents have failed to adduce tangible evidence on record to establish their plea that the suit property is joint Hindu family coparcenary property and the respondents had interest therein by way of birth.

I have heard counsel for the appellant, perused the records and find no merit in the appeal.

The appellant in the written statement has raised a plea that she is a bona fide purchaser for consideration. Her plea of bona fide purchaser would require consideration only in case the findings recorded by the courts below that the suit property is joint Hindu family coparcenary property are reversed.

So far as the plea that the sale was for legal necessity, counsel for the appellant after going through the contents of the written statement available in his brief, has fairly conceded that no such plea was raised by

the appellant that Sher Singh sold the suit property for legal necessity. As the appellant did not raise any such plea, her contention that the trial court was obligated to frame an issue in this regard is misconceived and liable to be rejected. Any attempt made by the appellant during course of evidence to prove that the sale was made by Sher Singh for legal necessity would not enure to her benefit for want of pleadings as there is no gainsaying that evidence without pleadings is of no relevance and cannot be looked into. In this view of the matter, there is no merit in the contention of the appellant that the suit property was sold by Sher Singh for legal necessity.

This brings the Court to the submission made by counsel that the respondents did not adduce sufficient evidence to prove their plea that the suit property is joint Hindu family coparcenary property. Counsel is not in a position to deny that litigation started between Sher Singh and respondent Digamber Singh as back as in the year 1984 wherein the suit property was held to be joint Hindu family coparcenary property of Digamber and Sher Singh and the judgment passed in the said suit has attained finality. The present appellant is claiming right in the suit property through Sher Singh and, therefore, she is bound by the judgment and decree dated 24.9.1984 affirmed in appeal on 6.4.1985. It is not open for the appellant to challenge those findings when otherwise there is no such challenge made by her in the written statement. The plea of the appellant that the suit property is self acquired property of Sher Singh does not get substantiated from any materials on record. Under these circumstance, I do not find any illegality in the concurrent findings of fact recorded by the courts below in favour of the respondents when otherwise no substantial

question of law, as has been sought to be raised in para 12 of the grounds of appeal, arises for adjudication.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

14.1.2016

PARAMJIT