

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

RSA-5841 of 2015 (O&M)

Date of decision: 15.01.2016

Bharpai and others

...Appellants

Versus

Maya Devi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. D.D. Sharma, Advocate for the appellants.

Jitendra Chauhan, J.

By way of the present appeal, the plaintiff/appellant has assailed the judgment dated 04.08.2015, passed by District Judge, Rohtak, upholding the judgment dated 07.08.2013, passed by Civil Judge (Jr. Divn.), Rohtak, whereby the suit for declaration with consequential relief of mandatory injunction filed by the plaintiffs/appellants was dismissed.

2. The facts giving rise to the instant second Appeal is that the appellants/plaintiffs filed a suit for declaration with consequential relief of mandatory injunction, with regard to

property measuring 21 Kanal, 2 Marla situated within the revenue of estate of village Kutana, Tehsil and District Rohtak, as described in para No.1 and 2 of the plaint, which was owned by Sardara deceased father-in-law of appellant/plaintiff No. 1, grandfather of Appellants/Plaintiffs No. 2, 3, 4, 5, 6, 7 and father of appellant/plaintiff no. 8. The total suit land measured 84 Kanal 7 Marla out of which Sardara the ancestor of plaintiffs had $1/4^{\text{th}}$ share which comes to 21 Kanal and 2 Marlas. Out of the said land he sold 2 kanals 10 Marlas to one Shri krishan predecessor-in-interest of Respondent-Defendant No. 1 to 7 vide registered sale deed dated 24.03.1966 for a sale consideration of Rs. 1,000/- and consequently, mutation with regard to the same was sanctioned in favour of Vendee Shri Krishan on 25.03.1974. Likewise, Sardara sold 13 Kanals and 16 of land to Bal Kishan respondent/defendant No. 1 for sale consideration of Rs. 13,500/- vide registered sale deed dated 14.05.1971 (Ex. DW1) and mutation in this regard was sanctioned on 14.12.1971. In all Sardara sold 16 Kanals 6 Marlas of land out of his share of 21 Kanals 2 Marlas and was left with 4 Kanal 16 Marlas of land. After Sardara's death mutation of 9 Kanals 6 Marlas of land was sanctioned in favour of his legal heirs but due to inadvertence

the land sold by Sardara to Shri Krishan vide registered sale deed dated 24.03.1996 measuring 2 Kanal 10 Marlas was not taken into consideration. Later on this mistake was rectified by the Revenue Officer of the concerned District.

3. The case put forth by the appellants/plaintiffs before the Courts below was that the sale deeds executed by Sardara whereby he had sold 16 Kanals 6 Marlas of land out of his total holding measuring 21 Kanals 2 Marlas are a result of fraud which was played upon Sardara by the vendees. Further that Sardara was an illiterate and the vendees took advantage of the same and got the sale deed executed. The sale deeds executed were void as the entire land in the hands of Sardara was ancestral property and could not have been sold without consideration and legal necessity.

4. On the other hand, the respondent/defendants No. 1 to 8 denied the claim of the appellant/plaintiffs and stated that the sale deeds executed by Sardara were valid and genuine. As far as land sold by Sardara to Bal Kishan-defendant no. 8 the same was under mortgage with Munish son of Kedara and Ram Narain son of Dalip Singh which was later redeemed by Bal Kishan. Further that at the time of execution of sale deeds

Sardara was in a fit state of mind and health and was fully aware of the nature of transaction and the amount of sale consideration as received. Moreover, Mange Ram son of Sardara and husband of plaintiff Bharpai and father of other plaintiffs was an attesting witness to the sale deed dated 14.05.1971 whereby, 13 Kanals 16 of land was sold to Bal Kishan/defendant No. 8. Meaning thereby, that Mange Ram was fully aware that the land sold was under Mortgage and his father had no money to redeem it.

5. I have heard the rival contentions of learned counsel for the appellants.

6. The finding returned by the Courts below is that the plaintiffs failed to prove that the land sold by Sardara was ancestral property. With regard to this the plaintiffs have relied upon their oral evidence but have not placed on record any documentary evidence showing that the said land devolved upon Sardara from their common ancestor. Moreover, Sardara had no money to redeem the land under mortgage with Ram Narain son of Dalip Singh and on account of the same he decided to sell the same for Rs. 13,500/-.

7. All the submissions made by the learned Counsel for the appellants pertains to the factual matrix of the matter and the

counsel has not been able to show that any law point is involved in the matter or the Courts below failed to consider the evidence brought on record or the impugned judgments suffer from any illegality or perversity. Accordingly, the present appeal is dismissed.

15.01.2016

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(JITENDRA CHAUHAN)
JUDGE