

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

R.S.A No. 356 of 2014(O&M)

Date of decision : 04.04.2016

Kewal Singh

..... Appellant

Versus

Parbhat Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.R.S.Chauhan, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 04.09.2013 passed by the learned Additional District Judge, Pathankot, vide which the appeal filed by defendants no.1 and 2 against the judgment and decree dated 14.01.2010, passed by the learned Additional Civil Judge (Sr. Division), Pathankot, has been allowed and the suit filed by the plaintiff-appellant has been dismissed with costs throughout.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The plaintiff-respondent has filed the suit for declaration to the effect that the land measuring 125 Kanals 16 Marlas as detailed and described in the head note of the plaint situated in village Azizpur, Tehsil Pathankot, District Gurdaspur is the joint Hindu Family/Coparcenary property of the plaintiff and defendants no.1 and 2 and the sale deeds

dated 13.06.2002 executed by defendants no.1 and 2 in favour of defendants no.3 and 4 are illegal, null and void, without consideration, without any legal necessity, not an act of good management and are not binding on the rights of the plaintiffs. Likewise, the mutations no.881 and 882 sanctioned on 15.06.2002 are illegal. In the consequential relief, a decree for permanent injunction has been sought restraining the defendants from ousting the plaintiff from the possession over the suit land as coparcener/owner.

4. As per averments in the plaint, the appellant-plaintiff Kewal Singh, respondent-defendant no.2 Parveen Singh are the sons of respondent-defendant no.1 Parbhat Singh. They constitute the joint Hindu Family. They are joint in mess and residence. The suit property measuring 125 Kanals 6 Marlas as detailed and described in the head note of the plaint is their ancestral, joint Hindu Family and coparcenary property. Defendant no.1 has been acting as *Karta* of the joint Hindu Family. The suit property came by way of succession and also by way of purchase from the joint funds of the family and has been put in common pool. Plaintiff was employed in Army to enhance the income of the joint Hindu Family. Defendant no. 1 has been acting on the ill advice and under the influence of defendant no.2. Defendants no. 1 and 2 have alienated $\frac{3}{4}$ share of the suit land by way of sale deeds dated 13.06.2002 in favour of defendants no. 3 and 4. The said sale deeds are nullity without being legal necessity and not being an act of good management. The plaintiff-appellant is not bound by such sale of the coparcenary property. Hence, the suit.

5. Respondent-defendants no.1 and 2 contested the suit by filing the joint written statement on the grounds *inter alia* that the suit property was exclusive property of Krishna Devi wife of Bhuri Singh. She has bequeathed the suit land to the extent of 8 acres in favour of defendant no.1 Parbhat Singh by way of registered Will dated 20.12.1982. She has also transferred the suit property to the extent of 4 acres each by way of sale deeds to the plaintiff-appellant and respondent-defendant no.2. So, the suit property was the self acquired property of defendant no.1. Defendants no.1 and 2 have sold the land of their share vide impugned sale deeds. It was further pleaded that plaintiff and his wife pressurized defendant no.1 to give 8 acres of land to them and when he refused to accede their demand, he was beaten and due to this attitude of theirs, he disinherited the plaintiff. He is residing separately for the last 10 years. All other pleas raised in the plaint were controverted.

6. Defendants no. 3 and 4 contested the suit on the plea that they have purchased the property on the basis of the valid sale deed after verifying the revenue record as well as the physical verification. The mutations have been legally sanctioned in their favour. Thus, the defendants pleaded for dismissal of the suit.

7. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 18.10.2002:-

1. Whether the plaintiff is entitled to declaration as prayed for?
OPP
2. Whether plaintiff is entitled to permanent injunction as prayed for?OPP
3. Whether suit is not maintainable in the present form?OPD

4. Whether the plaintiff has not come to the Court with clean hands?OPD
5. Whether the plaintiff is estopped by his own act and conduct for filing this suit?OPD
6. Whether the plaintiff has no cause of action to file this suit?OPD
7. Relief.

8. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiff vide impugned judgment and decree dated 14.01.2010.

9. Respondent-defendants no.1 and 2 preferred the appeal and the same has been allowed by the learned First Appellate Court, Pathankot, vide impugned judgment and decree dated 04.09.2013. Hence this Regular Second Appeal.

10. I have heard Mr.R.S.Chauhan, Advocate, learned counsel for the appellant and have meticulously gone through the record of the case.

11. Initiating the arguments, learned counsel for the appellant contended that the suit property was the ancestral and coparcenary property of the appellant-plaintiff and respondent-defendants no.1 and 2. He contended that the pedigree table of the family is reproduced on the back of mutation no.699 copy Ex.P-3/Ex.D2. He contended that said pedigree table shows that initially Vakil Singh was the owner of the suit property. He had three sons namely Bhuri Singh, Harnam Singh and Babu Ram. Krishna Devi was the widow of Bhuri Singh. Defendant no.1 Parbhat Singh is the son of Harnam Singh, the brother of Bhuri Singh. Thus, he contended that the suit land has devolved upon Parbhat Singh

from the common ancestor Vakil Singh. So, it will be ancestral and coparcenary property in the hands of defendant no.1 Parbhat Singh. He was holding the suit property only being *Karta* of the joint Hindu Family and had no jurisdiction to transfer the suit property without any legal necessity. Learned counsel for the appellant contended that the impugned sale deeds dated 13.06.2002 are illegal as the same have been executed by defendants no.1 and 2 in favour of defendants no.3 and 4 without any legal necessity, without consideration and not as an act of good management. Such sale deeds are illegal and are liable to be set aside.

12. He further contended that the learned trial Court has decreed the suit filed by the appellant by giving well reasoned judgment. The suit property was held ancestral and coparcenary property of the parties and the sale deeds were held invalid. He contended that the learned First Appellate Court has reversed the well reasoned judgment passed by the learned trial Court without any cogent reason.

13. I have duly considered the aforesaid contentions.

14. The plaintiff-appellant has filed the suit for declaration to the effect that the suit land is the joint Hindu Family/Ancestral/Coparcenary property of the plaintiff, respondents-defendants no.1 and 2. He has challenged the sale deeds dated 13.06.2002 executed by defendants no.1 and 2 in favour of defendants no.3 and 4 on the ground that the said sale deeds were without consideration, without any legal necessity and not an act of good management.

15. In order to seek the relief, it was incumbent upon the plaintiff-appellant to establish that the suit land was ancestral/

coparcenary property in the hands of respondents-defendants no.1 and 2 only then, he could have challenged the alienation of the suit property by respondent-defendant no.1 on the ground of legal necessity and not being an act of good management. But, in my opinion, the appellant-plaintiff was utterly failed in this regard. The approach of the learned trial Court was totally erroneous. He has returned the findings that as the Will Ex.D-1 was not proved in accordance with law, so as per the pedigree table shown on the mutation Ex.D-2, the property is proved to be undivided Hindu Coparcenary property. As per para no.221 of Mulla's Hindu Law, all properties inherited by a male Hindu from his father, father's father or father's father's father is ancestral property. But, in the instant case, it is an admitted fact that defendant no.1 has obtained 8 acres of suit land on the basis of the Will. Learned counsel for the appellant has referred to the mutation no.699 copy Ex.D-2/P-3, which clearly shows that defendant no.1 has obtained the property of Krishan Devi, widow of Bhuri Singh son of Vakil Singh, who was his father's brother's widow on the basis of the registered Will dated 20.12.1982. Krishna Devi has inherited the property from her husband Bhuri Singh. She has become the absolute owner of the suit property under Section 14 of the Hindu Succession Act, 1956. She had bequeathed the suit property to the extent of $\frac{1}{2}$ share to defendant no.1 by way of Will. Thus, the mode of acquisition of the suit property by defendant no.1 is certainly not the inheritance. Defendant no.1 Parbhat Singh was husband's brother son of Krishna Devi. So, he could not be the sole legal heir of deceased Krishna Devi as Bhuri Singh also had another brother namely Babu Ram, who had four issues.

Defendant no.1 Parbhat Singh has also other siblings. Thus, defendant no.1 Parbhat Singh has not acquired the property of Kirshna Devi by way of inheritance. Rather, he got the property on the basis of the Will, which could not be stated to be ancestral and coparcenary property by way of any stretch of imagination. Similarly, the mutation no.623 Ex.D-1 shows that the present appellant Kewal Singh and his brother Parveen Singh have purchased $\frac{1}{2}$ share of the property of Krishna Devi by way of sale deed no. 1598 dated 19.10.1980. So, respondent-defendant no.2 Parveen Singh has purchased his share of the suit property from Krishna Devi. So, he was also the absolute owner of his share of the suit property. Appellant-plaintiff Kewal Singh has admitted in the cross-examination that he is owner to the extent of 4 Killas of land by virtue of the sale deed executed by Krishna Devi and likewise Krishna Devi has executed sale deed of 4 Killas of land in the name of his brother Parveen Singh. So, respondent-defendant no.2 is also proved to be the absolute owner of his share of the suit property.

16. There is no material on record to show that appellant-plaintiff or respondents-defendants no.1 and 2 have thrown their absolute property in the common pool of the alleged joint Hindu Family to make it the coparcenary property. Even, the existence of the joint Hindu Family among the plaintiff and defendants no.1 and 2 is not established. In the cross-examination, the appellant has admitted his differences with his parents. He has admitted in the cross-examination that the security proceedings under Section 107, 151 Cr.P.C were initiated against him, but alleged that those were on false grounds at the initiative of his

brother. No cogent evidence has been adduced by the appellant-plaintiff in order to establish that they were joint in mess and residence. So, the plaintiff has not been able to establish that he constitutes the joint Hindu Family with defendants no.1 and 2. Thus, there could be no question of blending the absolute property to the coparcenary property of the joint Hindu Family.

17. Consequently, the appellant-plaintiff has failed to prove that he constitutes a joint Hindu Family with defendants no.1 and 2. He has also not been able to establish that the suit property acquired by defendants no.1 and 2 i.e. by way of Will and sale deed respectively was the ancestral/coparcenary property of the alleged joint Hindu Family. Therefore, defendants no.1 and 2 were fully competent to alienate their absolute property in favour of defendants no.3 and 4 vide sale deeds dated 13.06.2002, which are legal and valid and appellant-plaintiff has no *locus standi* to challenge the said alienation on the grounds put-forward by him in the plaint.

18. Thus, I have no reason to differ with the findings recorded by the learned First Appellate Court, which do not call for any interference by this Court.

19. Consequently, the present appeal having no merits is hereby dismissed with with costs.

April 04, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**