

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

RSA No.3675 of 2014 (O&M)

Date of decision : 13.01.2016

Umrao Lal Sharma

.....Appellant

Versus

Smt. Tara Devi alias Sarasti Devi and others

...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. Vinod Kunger, Advocate for appellant.

DARSHAN SINGH, J.

This regular second appeal has been directed against the judgment and decree dated 21.03.2014, passed by learned Additional District Judge, Ferozepur vide which the appeal against the judgment and decree dated 07.05.2012, passed by learned Additional Civil Judge (Senior Division), Ferozepur has been dismissed.

2. For convenience sake, reference to the parties is being made as per their status in the civil suit.
3. The appellant-plaintiff has filed the suit for seeking

declaration to the effect that he is owner to the extent of 1/4th share in the house in dispute with consequential relief of permanent injunction restraining the defendants from dispossessing the plaintiff forcibly and illegally from the portion shown as 'A B C D' in the site plan attached with the plaint and further restraining defendant No.1 from alienating the house/portion in question to anybody else.

4. As per the averments in the petition, the plot in dispute on which the construction has been raised, was the ancestral property. The construction thereupon has been raised with the hard earned money of the plaintiff and defendants No.2 & 3. Defendant No.1 is the father, defendants No.2 & 3 are real brothers and defendants No.4 to 8 are the sisters of the plaintiff. Defendant No.1 has threatened that he will alienate the house in question including the portion in question to someone. The plaintiff being the son of defendant No.1 is the legal owner of 1/4th share of the house in question. He is in actual possession of one room, bathroom and kitchen, shown as red marked 'A B C D' in the site plan. Though he is entitled to more accommodation in the house in question as the total area of the house in question is 50 Marla and he is entitled to 12 ½ Marla out of the house in dispute. It is further pleaded that defendant No.1 had got served a false and frivolous notice dated 01.11.2004 which was duly replied. Hence, this suit.

5. Defendants No.1 to 3 contested the suit on the grounds *inter alia* that the suit property was purchased by defendant No.1 through sale deeds dated 10.07.1981 and 31.03.1993. The plaintiff had not spent any penny on the construction over the plot in question. The plaintiff and

his wife always created nuisance and threatened to defendant No.1 to kill him. The plaintiff is only in permissive possession of the part in property as a tenant and he has no right to claim any share in the house in question. The answering defendant specifically denied that the suit property was ancestral property of the parties to the suit. Remaining defendants also filed the separate written statement.

6. From the pleadings of the parties, the following issues were framed by the learned trial court:-

1. Whether the plaintiff is entitled to relief of declaration as prayed for? OPP
2. Whether plaintiff is entitled to consequential relief of permanent injunction as prayed for? OPP
3. Whether the house in question is ancestral coparcenary property? OPP
4. Whether the present suit is not maintainable in the present from? OPD
5. Whether the plaintiff has no *locus standi* to file the present suit? OPD
6. Whether the plaintiff is a tenant over the property in question? OPD
7. Relief.

7. The learned trial court partly decreed the suit. The plaintiff appellant was declined the relief of declaration and injunction restraining defendant No.1 from alienating the suit property. However, the defendants were restrained from dispossessing the plaintiff from the portion shown as 'A B C D' illegally and forcibly vide impugned judgment and decree dated 07.05.2012.

8. The appeal preferred by the appellant-plaintiff against the

aforesaid judgment and decree was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 21.03.2014.

9. Aggrieved with the aforesaid judgment and decree, the present regular second appeal has been preferred.

10. I have heard Mr. Vinod Kunger, Advocate, learned counsel for the appellant and carefully gone through the paper-book.

11. Initiating the arguments, learned counsel for the appellant contended that the house in dispute was ancestral property of the parties to the suit. The plaintiff appellant has 1/4th share in the suit property. He has also contributed the funds for the construction of the house. Thus, he contended that relief of declaration has been wrongly declined by the learned trial court. He further contended that as the plaintiff has a right by birth in the suit property, so defendant No.1 had no right to alienate the same.

12. I have duly considered the aforesaid contentions.

13. The entire suit of the plaintiff is based on the plea that the property in dispute is ancestral and coparcenary property of the plaintiff and defendants. It is settled principle of law that burden of proof is always on the person who alleges the fact. So, it was for the plaintiff to establish that the property in dispute was ancestral and coparcenary property but the plaintiff has not produced any documentary evidence to establish that the suit property was the ancestral property of the parties.

14. It is settled principle of law that question regarding ancestral nature of the property cannot be decided simply on the basis of

the oral evidence. From the judgment of the learned trial Court, it is evident that in the cross-examination the plaintiff admitted that he had not filed any kind of document which shows that property in question is ancestral property. So, no documentary evidence has been produced on record by the plaintiff to establish that the house in question was their ancestral property.

15. To the contrary, defendant No.1 has brought on record the copy of the sale deeds Ex.D1 and Ex.D2. The copy of the sale deed Ex.D1 dated 10.7.1981 and Ex.D2 dated 31.3.1993 shows that the plot in question was purchased by defendant No.1 as observed by learned courts below in the impugned judgment. So, these sale deeds depicts that the property in dispute was in fact purchased by defendant No.1 through sale deeds Ex.D1 and Ex.D2. There is no rebuttal to the aforesaid documentary evidence.

16. The plaintiff has also not placed on file any documentary evidence to show that he has contributed the funds for the construction of the house. In the cross-examination he has admitted that the property in dispute was constructed by his elder brothers and father. PW3 Manjit Singh has also admitted in the cross-examination that construction upon the property in question was raised by Madan Lal. He further deposed that same was purchased by defendant No.1.

17. Thus, from the aforesaid evidence, there is no escape from the conclusion that the plaintiff has failed to establish that the house in dispute was the ancestral and coparcenary property of the parties or that he had contributed any funds for the construction of the house in

dispute rather from the evidence on record it is established that the suit property is the self acquitted property of defendant No.1. The plot thereof was purchased by defendant No.1 vide sale deeds Ex.D1 and Ex.D2 and construction thereupon was also raised by him. Thus, the appellant-plaintiff cannot claim any share in the suit property on the plea that the property in dispute was his ancestral property.

18. Consequently, the relief of declaration has been rightly declined by the learned courts below. Similarly, as defendant No.1 is the absolute owner of the suit property no clog can be put on his right qua alienation. Thus, there is no illegality or perversity in the findings arrived at by the learned courts below.

19. Consequently, no question of law, much less, the substantial question of law as claimed by the appellant-plaintiff arises in the present appeal.

20. Resultantly, the present appeal, having no merits, is dismissed in *limine*.

21. However, no orders as to costs.

13.01.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**