

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

**RSA No.5798 of 2014 (O&M)**

**Date of decision : 08.04.2016**

**Dhan Singh and another**

.....Appellants

*Versus*

**Hari Ram 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. Abhimanyu Singh, Advocate for appellants.

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**DARSHAN SINGH, J.**

The present regular second appeal has been preferred by the appellants-plaintiffs against the judgment and decree dated 17.09.2014, passed by learned Additional District Judge, Palwal, vide which the appeal filed by them against the judgment and decree dated 18.05.2011, passed by the learned Civil Judge (Junior Division), Palwal, has been dismissed.

2. The appellants-plaintiffs have filed the suit for declaration and joint possession with consequential relief of permanent injunction. As per the averments in the plaint, respondent-defendant No.2 Karey was

recorded as joint owner in joint possession of the ancestral agricultural land to the extent of 1/3rd share. He was the *Karta* of the joint Hindu family, consisting the plaintiffs and defendant No.2. They were the co-parceners and were joint in food, mess and residence. No partition of ancestral and non-ancestral properties had taken place. Respondent-defendant No.1 has got executed the false and fictitious agreement to sell dated 16.07.2003 with respect to the land in dispute taking undue advantage of the illiteracy of defendant No.2 as well as by practicing fraud and misrepresentation. False recitals of payment of Rs.6,62,000/- has been shown, whereas in fact the loan transaction of Rs.2,50,000/- has taken place between them at the rate of 1% interest. The land in dispute was ancestral property and was purchased by defendant No.2 out of the joint Hindu family funds by alienating the ancestral land by two registered sale deeds dated 02.06.1976 and 04.06.1976. Defendant No.1 on the basis of the aforesaid fictitious agreement, got executed and registered the sale deed dated 23.03.2006 in his favour by filing the false and frivolous suit for specific performance of contract and obtained the *ex parte* decree dated 23.07.2005. The plaintiffs and defendant No.3 had got the right in the suit land by birth being co-parceners. The alleged alienation was without legal necessity, without consideration and without any benefit of the joint Hindu family. The impugned sale deed does not confer any right, title or interest to defendant No.1. Defendant No.1 on the basis of the impugned sale deed, is threatening to alienate the suit land and is bent upon to take up the illegal and forcible possession

thereof. Hence, the suit.

3. Respondents-defendants No.2 & 3 filed the written statement admitting the case of the plaintiffs.

4. The suit has been contested by respondent-defendant No.1 on the grounds inter alia that the plaintiffs have got no concern whatsoever with the suit land. He is owner in possession of the suit land by virtue of the sale deed executed and registered on 23.03.2006 in his favour in execution of the decree dated 23.07.2005 passed by the Court of learned Additional Civil Judge (Senior Division), Palwal in civil suit RBT No.267 of 2004. He also denied that the suit land was ancestral property of defendant No.2. It was further pleaded that defendant No.3 was present at the time of execution of the agreement to sell and he witnessed the said agreement dated 16.07.2003. The earnest money was also paid to defendant No.2 in presence of defendant No.3. All other pleas raised in the plaint were controverted.

5. From the pleadings of the parties, following issues were framed by the learned trial Court vide order dated 29.09.2008:-

1. Whether the plaintiffs are held entitled for declaration as prayed for? OPP
2. Whether the suit of the plaintiffs is not maintainable? OPD
3. Whether the plaintiffs have not cause of action and locus standi to file the present suit? OPD
4. Whether the plaintiffs have concealed the material facts from the Court? OPD
5. Whether the suit is collusive between the plaintiffs and defendants No.2 & 3? OPD

6. Whether the suit of the plaintiffs has not been properly valued for the purposes of court fee and jurisdiction? OPD

7. Relief.

6. The learned trial Court on appreciating the evidence on record and contentions raised by learned counsel for the parties, dismissed the suit filed by the appellants-plaintiffs vide impugned judgment and decree dated 18.05.2011. Aggrieved with the aforesaid judgment and decree, they preferred the appeal and the same has also been dismissed by the learned first Appellate Court vide impugned judgment and decree dated 17.09.2014. Hence, this regular second appeal.

7. I have heard learned counsel for the parties and meticulously gone through the paper-book.

8. Learned counsel for the appellants contended that the suit property was ancestral property in the hands of respondent No.2 Karey. He contended that Kundan, the grandfather of the plaintiffs, had sold another ancestral property vide sale deeds dated 02.06.1976 and 04.06.1976 Ex.PW3/A and Ex.PW3/B, respectively and the sale proceed thereof was utilised to purchase the suit property. The suit property was purchased by Kundan Singh, the grandfather of appellants, in the name of respondent-defendant No.2 Karey, the father of the plaintiffs. Thus, he contended that the suit property was ancestral in the hands of defendant No.2, in which the plaintiffs have got the rights by birth and defendant No.2 had no authority to alienate the same without any legal necessity

and for the benefit of the joint Hindu family.

9. He further contended that the agreement to sell dated 16.07.2003 was a fictitious document, procured by defendant No.1 by playing fraud. Actually only the loan transaction had taken place. Thus, he pleaded that the learned courts below have not taken into consideration the material facts. The sale deed dated 23.03.2006 executed in favour of defendant No.1 is illegal and is not binding on the rights of the appellants-plaintiffs.

10. I have duly considered the aforesaid contentions.

11. The entire suit of the appellants-plaintiffs is based on the plea that the suit property was the ancestral property and they have got rights therein by birth. They have also alleged that defendant No.1 had procured the false and fictitious agreement to sell dated 16.07.2003 from defendant No.2 by playing fraud and misrepresentation on the basis of which, he procured the *ex parte* decree and the sale deed dated 23.03.2006 in his favour is illegal.

12. The appellants-plaintiffs have not been able to establish that the suit property was ancestral in the hands of defendant No.2. In the plaint it is the specific plea of the appellants that the suit property was purchased by defendant No.2 Karey their father out of the joint Hindu family funds by alienating the ancestral land vide two registered sale deeds dated 02.06.1976 and 04.06.1976 but they have shifted their stand in the evidence. Plaintiff No.1 Dhan Singh has stepped into the witness box as PW1. He has stated in the cross-examination that the suit property

was purchased by his grandfather Kundan in the year 1976 in the name of his father Karey. It is settled principle of law that the evidence beyond pleadings deserves outright rejection and cannot be taken into consideration. In the pleadings, the appellants have alleged that the suit property was purchased by defendant No.2 Karey their father by selling another ancestral property vide sale deeds dated 02.06.1976 and 04.06.1976 but from the evidence it emerges that in fact the land vide afore mentioned two sale deeds was sold by Kundan their grandfather and he has purchased the land in favour of defendant No.2 Karey. There is absolutely no record to show that the suit property was purchased in the name of defendant No.2 by utilising the funds of the joint Hindu family. No evidence has been led by the appellants-plaintiffs to show that the land which has been sold by Kundan vide sale deeds dated 02.06.1976 and 04.06.1976 was ancestral property in his hands. In the absence of that evidence, it cannot be stated that the suit property was purchased by utilising the funds of the joint Hindu family derived out of the sale of the ancestral property. So, the appellants-plaintiffs have failed to establish the very foundation of their case that the suit property was ancestral property in the hands of defendant No.2.

13. The present suit appears to be the result of collusion between the appellants-plaintiffs and their father defendant No.2 Karey. He has even filed the admitted written statement. It emerges from the facts of the case that the agreement to sell dated 16.07.2003 was executed by defendant No.2 in favour of defendant No.1 for the sale of the suit

property for a sum of Rs.9,90,625/-. On the basis of said agreement to sell, the decree for specific performance of contract was passed in favour of defendant No.1 on 23.07.2005 by the learned Additional Civil Judge (Senior Division), Palwal. That was an *ex parte* decree. The application filed by defendant No.2 for setting aside the *ex parte* decree was dismissed. Thereafter, defendant No.1 Hari Ram filed the execution petition to enforce the decree dated 23.07.2005. In execution of that decree, the sale deed dated 23.03.2006 has been executed in favour of defendant No.1 by the Local Commissioner appointed by the executing Court. So, the agreement to sell dated 16.07.2003, alleged to be false and fictitious by the appellants, has already stood the judicial scrutiny in the previous suit for specific performance. There is no evidence on record to show that there was any loan transaction between defendants No.1 & 2. It appears that the suit has been filed by the appellants-plaintiffs in collusion with their father defendant No.2 Karey, when they lost the previous round of litigation. The appellants have failed to establish that the suit property was ancestral property in the hands of defendant No.2. The plea raised by appellants that the agreement to sell dated 16.07.2003 was a false and fictitious document is not tenable, as the same had already stood the test of judicial scrutiny in the suit for specific performance. The impugned sale deed 23.03.2006 has been executed in favour of defendant No.1 through judicial process in the execution of the decree dated 23.07.2005 by the Local Commissioner appointed by the executing Court.

14. Thus, I have no reason to differ with the concurrent findings arrived at by the learned courts below. Thus, no question of law, much less the substantial question of law, arises in the present appeal.

15. Resultantly, the present appeal has no merits and the same is hereby dismissed with costs throughout.

**08.04.2016**

*sunil yadav*

**( DARSHAN SINGH )  
JUDGE**