

RSA No.5920 of 2014(O&M)
Date of Decision: 17.3.2016

Balwinder Singh

---Appellant

versus

Kulwinder Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Deepak Aggarwal, 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 consistent findings recorded by the courts below whereby suit filed by the plaintiffs including the present appellant qua the suit property has been dismissed by the Additional Civil Judge (Senior Division), Talwandi Sabo (hereinafter referred to as “the trial court”) and the judgment and decree passed by the trial court has been affirmed in appeal by the Additional District Judge, Bathinda.

Perusal of the allegations raised in the plaint, particularly reproduced in the judgments passed by the courts below, would evident that Balwinder Singh and another staked their claim to the suit property primarily on the plea that the parties are Hindu, governed by the Hindu law and the suit property is the joint Hindu family coparcenary property of the

plaintiffs and defendants No. 2 to 5, therefore, defendant No. 2 namely Sh. Bachan Singh was not competent to transfer suit property in favour of Sh. Kulwinder Kaur on the basis of judgment and decree dated 30.7.1998 passed in civil suit No. 170 dated 2.3.1996.

Counsel for the petitioner would submit that suit land was inherited by Sh. Bachan Singh from his father Kartar Singh, therefore, the suit land was joint Hindu family coparcenary property in the hands of Sh. Bachan Singh and thus he was not competent to transfer the same without legal necessity and consideration. Another submission made by counsel is that Smt. Kulwinder Kaur appeared in the witness box and expressed her ignorance about the judgment and decree dated 30.7.1998.

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

Counsel for the appellant is not in a position to point out if there is an averment in the plaint as to how the suit property was alleged to be coparcenary in nature. He has further failed to invite attention of the Court to any materials on record that would suffice to prove that the suit land was owned by Sh. Hazura Singh (great grand father of the appellant) and was inherited by Sh. Kartar Singh, his grand father from Sh. Hazura Singh. There is no dispute about the fact that in order to prove a property to be coparcenary property, it is incumbent upon the person so claiming to establish that the property has come from father, father's father and father's father's father. As in the instant case, the appellant failed to establish that chain, no fault much less illegality can be found in the consistent findings

recorded by the courts below non-suiting claim of the plaintiffs that they had 1/7th share each in the suit property by way of birth or Bachan Singh, defendant No. 2 was not competent to alienate the suit land except for legal necessity and consideration.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine.

(Rekha Mittal)
Judge

17.3.2016
PARAMJIT