

RSA-6151-2014(O&M)

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-6151-2014(O&M)

Date of decision : 22.01.2016

Amit Kumar

... Appellant

Versus

Sharvan and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Mani Ram Verma, Advocate
for the appellant.

REKHA MITTAL. J.

The present regular second appeal has been directed against the judgment and decree dated 18.11.2014 passed by the Additional District Judge, Fatehabad whereby the appeal preferred by respondent No.1 against the judgment and decree dated 12.06.2012 passed in favour of the appellant-plaintiff in a suit for declaration, has been set aside.

The facts, in brief, are that Amit Kumar appellant (minor) through Smt. Roshni Devi, his mother and natural guardian filed the suit on the premise that Sh. Raghbir Singh respondent No.2, the grandfather of the minor has executed a release deed No.5553 dated 19.03.2008 in favour of respondent No.1 and the same is illegal, null and void and not binding on the rights of the appellant as he has right by birth in the property which is co-parcenary in nature. Respondent No.2 had no authority to transfer the suit land without his consent. The release deed

has been executed without legal necessity and consideration. As per Section 55-A of the Indian Stamp Act, the impugned release deed could not be got registered.

Respondent No.1 filed the written statement and challenged maintainability of the suit and locus standi of the appellant to file the suit. It is pleaded that Sh.Sher Singh, father of the appellant did not serve his father respondent No.2. He never cared for Smt.Vinda Devi and Kamla, the sisters of respondent No.2 and Indira, niece of respondent No.2. He (Sher Singh) even did not attend the marriages in the family nor he performed any obligation of Bhat etc. All the expenses were borne by the answering respondent and his father Ram Pal. Respondent No.2 debarred his son Sher Singh from inheriting his property. For the aforesaid reasons, respondent No.2 voluntarily executed the release deed in favour of the answering respondent. His aunts and sisters also relinquished their share in the suit property in his favour as per release deeds No.1425 dated 02.07.2009, 2154 dated 27.07.2008 and 1425 dated 02.07.2009. The appellant has no right to challenge the release deed as the suit property was not the Joint Hindu Family property.

The appellant filed replication reiterating his stand taken in the plaint and controverted the averments made in the written statement.

The learned trial Court, on consideration of issues framed for adjudication, evidence adduced by the parties in support of their respective claims and after having heard counsel for the parties, accepted

the plea of the appellant that the impugned release deed executed by respondent No.2 in favour of respondent No.1 is without legal necessity and without consent of the appellant, therefore, is not binding against the appellant. The mutation sanctioned on the basis of release deed was ordered to be set aside and respondent No.1 was restrained from alienating the suit property or to interfere in the joint possession of the appellant over the property in question.

Feeling dissatisfied with the judgment and decree passed by the learned trial Court, Sharvan, the beneficiary under the release deed filed the appeal which was decided by the Additional District Judge, Fatehabad in favour of respondent No.1, set aside the judgment and decree passed by the trial Court and the suit filed by the appellant-plaintiff is dismissed.

Feeling aggrieved by the judgment and decree passed by the Court in appeal, the instant appeal has been preferred by appellant-plaintiff Amit Kumar.

Counsel for the appellant would contend that the appellate Court has erroneously rather illegally set aside the well founded findings recorded by the learned trial Court. It is further argued that as the suit property was inherited by respondent No.2 from his father Lekh Ram as per mutation of inheritance bearing No.194 dated 26.11.2006, the suit property is ancestral in the hands of Raghbir Singh and the appellant being the grand son of Raghbir Singh has a right in the suit property by

birth.

I have heard counsel for the appellant, perused the records and find that the appeal is devoid of merit and merits rejection.

There is nothing on record suggestive of the fact that the suit property is a Joint Hindu Family co-parcenary property in the hands of respondent No.2 in which the appellant acquired a right by way of birth being the grand son of Sh. Raghbir Singh. Even otherwise, the appellant has got no right in the property in question which was inherited by his grandfather from his father when admittedly Raghbir Singh is alive and even the father of the appellant is alive. In view of the facts on record, it can be safely held that the learned trial Court committed a gross error in accepting the claim of the appellant but fortunately the error committed by the trial Court has been rightly rectified by the Court in appeal.

In view of what has been discussed hereinabove, neither any substantial question of law arises for adjudication nor there is any valid ground to interfere in the judgment and decree passed by the appellate Court. As a result, the appeal sans merit and is accordingly, dismissed in limine.

(REKHA MITTAL)
JUDGE

January 22, 2016.
Davinder Kumar