

RSA No. 2108 of 2012 (O&M)

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

**RSA No. 2108 of 2012 (O&M)
Date of Decision: 7.3.2017**

Vijay Pal

.....Appellant

Vs.

Pritam Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Arvind Seth, Advocate
for the appellant.

Mr. Jagdish Manchanda, Advocate
for the respondents.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 22.11.2011 passed by the learned Additional District Judge, dismissing first appeal of the plaintiff-appellant and upholding the judgment and decree dated 28.5.2010 of the learned trial court, dismissing suit for declaration with consequential relief of possession, plaintiff has approached this Court by way of present regular second appeal.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that appellant-plaintiff filed suit for declaration and for seeking possession as an indigent person on the

RSA No. 2108 of 2012 (O&M)

averments that Mani Ram son of Mangal was owner in possession of agricultural land measuring 4 bighas being 80/2462 share out of the total land measuring 123 bighas 2 biswas, fully detailed out in para No. 3 of the plaint. He sold away the land in favour of defendant No.1 vide registered sale deed No. 1816 dated 23.11.1995 for an ostensible consideration of ₹70,000/-. Defendant No.1 further sold this land to defendant No.2 vide registered sale deed No. 2127 dated 17.8.2004 for ostensible consideration of ₹2,21,000/- only. The plaintiff initially challenged the sale deed dated 23.11.1995 as illegal, null, void, ineffective, inoperative and not binding upon the rights of the plaintiff on the grounds that he was son of Mani Ram, he was jat by caste and according to the custom prevalent in their community, ancestral land could not be sold by its owner without any legal necessity. Shri Mani Ram had alienated the suit land in favour of defendant No.1 without any legal necessity. He had spent the sale amount received on his own bad vices, as he was addicted to bad habits of taking liquor etc. Suit land being ancestral property, plaintiff had a right in the same by birth and that he was not consenting party to the sale. It would be relevant to mention here that during the pendency of the suit, sale deed dated 27.8.2004 had been executed by defendant No.1 in favour of defendant No.2 and the plaintiff also challenged the same on the same grounds. He prayed for passing a decree for declaration to the effect that both the sale deeds executed in favour of defendant No.1 and defendant No.2 respectively were illegal, null and void and were not binding upon his rights and also prayed for passing a decree for possession of this land in his favour.

Defendants put appearance and filed their separate but contesting written statements, raising more than one preliminary objections. Plaintiff

RSA No. 2108 of 2012 (O&M)

filed his replication controverting the pleas taken in written statements and reiterating the stand pleaded in the plaint. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiff is owner in possession of land measuring 4 bighas as detailed in para No.3 of the plaint?
OPP
2. Whether the sale deed No. 2127 dated 17.8.2004 dated 23.11.1995 bearing No. 1816 executed by Mani Ram in favour of defendant No.2 in respect of suit land is illegal, null and void and not binding upon the rights of the plaintiff as prayed for? OPP
3. Whether suit is not maintainable? OPD
4. Whether the plaintiff has no locus standi and cause of action and maintain the present suit?OPD
5. Whether the suit of the plaintiff is time barred?OPD
6. Whether the civil court has got no jurisdiction to try and entertain the present suit?OPD
7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD
8. Whether the plaintiff has concealed the true and material facts from the court? OPD
9. Relief.

With a view to prove their respective pleaded cases, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has failed to proved his case. Accordingly, his suit for declaration with consequential relief of possession was dismissed by the learned trial court vide its impugned judgment and dated 28.5.2010. Dissatisfied, plaintiff filed his first appeal, which also came to be dismissed by learned first appellate court, vide impugned judgment and decree dated 22.11.2011. Hence this

RSA No. 2108 of 2012 (O&M)

regular second appeal at the hands of the plaintiff.

Heard learned counsel for the parties.

The entire case of the plaintiff-appellant revolves around the fact, as to whether the suit property as alleged by the plaintiff, was ancestral in the hands of Mani Ram son of Mangal or not and whether he could have sold it in favour of defendant No.1 vide registered sale deed No. 1816 dated 23.11.1995. However, when during the course of hearing, learned counsel for the appellant was asked to point out any material or evidence available on record to prove that suit property was ancestral in the hands of Mani Ram, he had no answer and rightly so, it being a matter of record, because the plaintiff-appellant miserably failed to prove that suit properly was ancestral property in the hands of Mani Ram son of Manga.

It is the settled proposition of law that no property would be presumed to be ancestral, until and unless it is proved to be so, by leading cogent evidence. As noticed above, plaintiff miserably failed to prove that property was ancestral in the hands of his father Mani Ram son of Mangal. Having said that, this Court feels no hesitation to conclude that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

1. State Bank of India Vs. Ghamandi Ram (dead) by his legal representatives Gurbux Rai, 1969 AIR (SC) 1330
2. Surjit Lal Chhabda V. Commissioner of Income-tax, Bombay, 1976 AIR (SC) 109
3. Surjit Singh and others Vs. Gurmit Singh and others,

RSA No. 2108 of 2012 (O&M)

2010 (3) PLR 122 (P&H)

4. Hawa Singh Vs. Daya Nand and others, 2010 (21)
RCR (civil) 918

5. Gurmail Singh Vs. Rajbir Singh and another, 2014 (4)
RCR (civil) 397

6. Jagdev Singh and another Vs. Major Singh and others,
2014 (82) RCR (civil) 214

On the other hand, defendants were bonafide purchasers for due consideration. In fact, once the plaintiff-appellant failed to prove the suit property to be ancestral which is his main plank, his suit was bound to fail. That is what has been held by learned courts below by recording their concurrent findings of facts. Under these circumstances, it can be safely concluded that learned courts below were well within their jurisdiction, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a just conclusion, learned first appellate court re-examined, re-considered and appreciated true facts of the case as well as the evidence, in the correct perspective. Learned Additional District Judge recorded his cogent findings in para 14 of the impugned judgment, which have been found based on sound reasons, thus, the impugned judgments and decrees deserve to be upheld, for this reason also.

Learned counsel for the appellant failed to point out any patent illegality or perversity in findings recorded by the learned courts below. He also could not point out any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the

RSA No. 2108 of 2012 (O&M)

hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

7.3.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No