

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.3332 of 2013 (O&M)
Date of Decision: 8.8.2017**

Rajbir

... Appellant

Versus

Smt. Rajpati and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. M.S. Kathuria, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

1. This appeal has been hanging fire since the day it was filed and from when it came up for hearing for the first time on November 29, 2013. The case was adjourned in the interest of justice because there was no representation on behalf of the appellant. On January 28, 2016 the records of the Courts below were requisitioned for May 19, 2016 in the presence of the counsel. Record was received and time was sought to address arguments. On August 17, 2016 the Coordinate Bench noticed that the case is being adjourned for the last more than three years for one reason and the other and on that date request was made to accommodate the arguing counsel since he had gone to admit his son in a Boarding school. The request was accepted.
2. On February 14, 2017 counsel pointed out that there was an error in the second last line of pg.13 of the judgment in appeal pointing that instead of defendant No.5 it should be read as defendant No.3. The case was adjourned to July 17, 2017. It may be noticed that on July 07, 2014 an

application was presented in the appeal for placing on record sale deed dated June 26, 2014 Annex A-1 stating that it was a very important document for adjudication in appeal. There is a pending stay application also filed under Order 41 Rule 5 CPC read with Section 151 CPC for staying the further alienation of suit land and maintaining status quo regarding the property in dispute. This application accompanied the previous applications mentioned herebefore. In the stay application it was averred that respondent No.7, namely, Dharambir had sold 4 kanal land out of the total 31 Kanals 7 Marlas land in dispute vide sale deed dated June 26, 2014. No orders have been passed on the applications so far. This is the position the appeal finds itself. When it was called for hearing, I heard Mr. M.S. Kathuria, learned counsel for the appellant at some length and reserved orders which are being pronounced today.

3. This is plaintiff's second appeal having succeeded in the Court of the learned Civil Judge (Junior Division), Charkhi Dadri which judgment and decree has been reversed by the learned Additional District Judge, Bhiwani.

4. The brief facts of the case are that the plaintiff filed a suit for declaration and injunction to the effect that he along with respondent No.4 and proforma respondents No.5 to 11 are owners in equal shares of land measuring 31 K 7 M falling in the revenue estate of Village Rahdaudi Tehsil Charkhi Dadri, District Bhiwani. The parties belong to the same family. Respondent No.4 is the father of the plaintiff whereas respondents No.1 to 3 are daughters-in-law and grand daughter of respondent No.4. Respondents No.5 to 11 are sons and daughters of respondent No.4.

5. Plaintiff asserted his plaint that respondents No.1 to 3 [in the present case] have no concern with the suit property being ancestral property and sought declaration that sale deed No.4 dated April 02, 2007 executed by respondent No.4 in favour of respondents No.1 to 3 is illegal, null and void as the ancestral property was sold without legal necessity. It was averred that respondent No.4 received the suit property from his father, namely, Richpal through a consent decree passed in Civil Suit No.404 of May 20, 1995 decided on May 27, 1995. The plaintiff asserted that his father respondent No.4 could not have adversely affected his rights in ancestral property and thereby debarring him from claiming his birth right share therein. The son asserted that the father had no right to alienate the entire ancestral suit property to respondent Nos.1 to 3, herein. In these facts and circumstances the suit was instituted on August 10, 2007 and the same was decided on January 07, 2012 by the trial Court who decreed the same.

6. The issue identified by the trial Court was whether the transfer of property by sale deed confers status of separate property over the property in dispute and if the answer to the same is in the negative, whether the respondent No.4 Hoshiyar Singh (father of the plaintiff) had any legal necessity to execute the sale deed. The trial Court held while picking up words from some commentary on law, without mentioning the source, but nevertheless not irrelevant on the general principles of the Specific Relief Act that this Act never intended to create rights by the virtue of declaratory decrees. Rights and disputes are to be decided as per the substantive laws and not the procedural laws. But what the Civil Judge drew from the commentary was that a consent decree cannot make suit property separate

property of Hoshiyar Singh and the same is to be treated to have devolved upon him by way of inheritance and, therefore, the suit property was ancestral in nature qua the sons of Hoshiyar Singh. That meant that plaintiff and defendants No.5 to 7, namely, Ramesh, Leela and Dharambir are children of Hoshiyar Singh. Once the Civil Judge had reached this conclusion then he went into the question of legal necessity of Hoshiyar Singh to alienate the suit property vide the sale deed in challenge.

7. Defendants No.1 to 4 in their written statements defended the sale deed as legal and valid by asserting that Hoshiyar Singh had to repay loans of several institutions and persons on which plea the Civil Judge observed that the assertion lack details and descriptions of the alleged creditors and this was indication that the claim was false. It was an admitted fact that the suit property was sold to near relatives of the vendor which also brings out the intention of the vendors and vendees to bypass the law and so the trial judge thought altered the natural course of devolution of the suit property by inheritance. There was no legal necessity to sell the property within the family.

8. Aggrieved by the judgment and decree of the trial Court, the vendees appealed to the District Court at Bhiwani *inter alia*, on the ground that their rights followed the decree of 1995 and accordingly the suit property became the self-acquired property of Hoshiyar Singh through whom they claim, the son opposing the proposition and defending the first appeal.

9. The learned Additional District Judge (I) Bhiwani by his judgment and decree dated April 24, 2013 did not agree with the trial Court.

10. The controversy in issue was whether the plaintiff had interest by birth in the suit property since his father was shareholder of ancestral property, but for the consent decree.

11. The First Appellate Court rightly reasoned by relying on the well settled position in law that in case if a person transfers some property by a decree to his son, the son gets the property as an individual property in his hands and not as property belonging to Hindu Undivided Family. The Judge placed reliance upon C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar and another, AIR 1953 SC 495.

12. In search of answers, the Lower Appellate Court visited the plaint Ex.P-8 of Civil Suit No.404 dated May 20, 1995 wherein respondent No.2 has mentioned that the suit property was owned by his father Richhpal. Richhpal in his written statement Ex.P-9 filed in the aforesaid suit acknowledged by admission that the suit land was his self-acquired property. It was on the basis of the admission of Richhpal that the then Sub Judge 1st Class vide decree Ex.P-10 decreed the suit of Hoshiyar Singh, father of the plaintiff.

13. The consent decree was not challenged in the present suit. Accordingly, the plaintiff is debarred from claiming the suit property as HUF property. The Judge observed that unfortunately, the learned trial Court had not considered this aspect and erroneously decreed the suit. Since it was self-acquired property of Hoshiyar Singh, he was competent to alienate the same in favour of the vendees in first appeal. This was clinching evidence upon which the appeal turned and the judgment and decree of the trial Court reversed. If this was the legal position obtaining, then the

Superior Judge was not wrong in concluding that any admissions made by the vendees/appellants are of no legal consequence as those would not alter their status and any such admissions are of no moment.

14. As a result, the sale deed executed by Hoshiyar Singh in favour of the vendee/appellants cannot be declared illegal, null and void. The learned Additional District Judge, Bhiwani drew its attention to the jamabandis for the year 1955-56 and 1963-64 and mutation entry No.217 Ex.P-7 flowing from the moot sale deed and correctly held that the bald assertion could not co-relate to the decree suffered by Richhpal in favour of Hoshiyar Singh.

15. No question of law, much less substantial arises for consideration on the second appeal side of this Court when the learned Additional District Judge, Bhiwani has appreciated the evidence on record, the facts of the case and the applicable law.

16. I have hardly any cogent reason to come to a different conclusion on the evidence and, therefore, the present appeal has no merit and thereby fails and is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

8.8.2017
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Whether speaking/reasoned Yes

Whether reportable No