

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-3702-2013(O&M)

Date of Decision:10.07.2017

Sachin and others

.....Appellants

Versus

Brij Lal

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

**Present: Mr.Sandeep Arora, Advocate,
for the appellants.**

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful plaintiffs are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby their suit for declaration was dismissed.

Brief facts of the case, as noticed by the learned trial court in para 2 of its impugned judgment, are that plaintiffs are sons and daughter of Davinder Kumar and grand children of defendant. The suit property is an ancestral coparcenary joint Hindu family property in the hands of Parkash Chand who had inherited the same from his father Jhansi Ram and now the plaintiffs and the defendant are the coparceners of the Joint Hindu Family. The defendant Brij Lal inherited the said property from the father of his father Parkash Chand. He had one son Davinder Kumar and 4 daughters. In the coparcenary family defendant and Davinder Kumar along with the plaintiffs became owners of the said joint property in equal shares. Father of the plaintiffs expired on 12.10.1999. The plaintiff No.1 was born on

22.8.1994. Thereafter, plaintiffs also become the co-parcener in the said coparcenary property in equal share. The defendant after the death of his son Davinder Kumar, turned out the plaintiffs and their mother Prem Lata from the Joint Hindu Family house. The defendant being the karta of the coparcenary/joint Hindu Family took the management and control over the whole agricultural as well as movable and immoveable assets of the coparcenary property. The defendant is addicted to bad vices like drinking, gambling etc. The profit derived from the property which is managed by the defendant is wasted to fulfill his bad habits. The defendant started to sell/dispose of the joint family/coparcenary property to some persons without any legal necessity. The defendant has also mortgaged some of the share of the joint Hindu Family coparcenary property illegally and unlawfully. The defendant is proclaiming that the suit property is his self acquired property and he is exclusive owner in possession of said property and has threatened that the plaintiffs have no share in the suit property and he will alienate the whole property as per his choice. The defendant has no right to sell more than his share i.e. $\frac{1}{2}$ share out of the suit property. The defendant is bent upon to sell the entire property including share of the plaintiffs, which necessitated the filing of the present suit.

Having been put to notice, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether plaintiff is entitled to declaration as prayed for?OPP*
- 2. Whether plaintiff is entitled to the relief of permanent injunction as prayed for?OPP*

3. *Whether the suit property in the hands of Parkash Chand, father of the defendant was his self acquired property?OPD*
4. *Whether any legal and valid Will was executed in favour of Brij Lal, defendant?OPD*
5. *Relief.”*

With a view to substantiate their respective stands taken in their pleadings, both the parties produced their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have failed to prove their case. Accordingly, their suit for declaration was dismissed by the learned trial Court vide its impugned judgment and decree dated 19.09.2011. Feeling aggrieved, plaintiffs filed their first appeal which also came to be dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 25.01.2013. Hence, this regular second appeal, at the hands of the plaintiffs.

Heard learned counsel for the appellants.

It was the own pleaded and argued case on behalf of the appellants-plaintiffs that the suit property was ancestral in the hands of defendant-Brij Lal. However, despite the fact that appellants were plaintiffs and onus was on them to prove their pleaded case, they failed to prove on record that the suit property was ancestral in the hands of Brij Lal-defendant. Admittedly, no excerpt of jamabandis was produced by the plaintiffs-appellants on record, before the learned courts below nor the concerned revenue official was produced as witness, to prove the relevant revenue record with a view to establish the suit property as ancestral in the hands of defendant.

Producing Gurdev Singh DW-Halqa Patwari in this regard was not sufficient because the plaintiffs were under the obligation to produce the excerpt of jamabandis. In the absence of any relevant revenue record having been proved by the plaintiffs-appellants, their suit for declaration was bound to fail. It is so said because the plaintiffs failed to prove the suit property to be ancestral in the hands of defendant which was very basis of their suit. Under these circumstances, it can be safely concluded that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Even if the Will set-up by the defendant was to be ignored for the sake of arguments, that fact itself will not absolve the plaintiffs-appellants from proving their pleaded case by producing relevant evidence, so as to establish that the suit property was ancestral in the hands of the defendant. Learned counsel for the appellants, despite making his best efforts could not improve the case of the appellants-plaintiffs in this regard because of lack of evidence and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that the learned Courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at his judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate Court in para 15 to 18 of its impugned judgment, which deserve

to be noticed here, read as under:-

“In the light of above facts and circumstances, it was incumbent upon appellants/plaintiffs to prove that property in dispute was ancestral/coparcenary Joint Hindu Family property in hands of respondent/defendant and only thereafter, onus was to be shifted upon respondent/defendant to prove that he had not succeeded property in dispute by way of natural succession. When evidence adduced by plaintiffs/appellants is evaluated, it is found that they have miserably failed to prove their case. Evidence of PW1 Prem Lata shows that she is mother and natural guardian of plaintiffs/appellants and has admitted that her deceased husband had been doing independent business of property dealer and milk diary and had income of Rs.35,000/- per month. She was not able to admit or deny the fact that Parkash Chand had executed a Will in favour of defendant/respondent. She has, however, admitted that she has not placed on record any document to show that how Parkash Chand and then Brij Lal had become owner of the property in dispute.

Statements of PW2 Sham Lal and PW3 Sukhpal also do not prove the fact that the property in dispute is ancestral Joint Hindu Family coparcenary property as alleged.

PW5 Gurdev Singh, Halqa Patwari, has deposed that he has issued copies of jamabandis Ex.P1 to Ex.P9 and at present, suit property is in the name of Brij Lal son of Parkash Chand. He has deposed that Brij Lal has inherited the property from his father. He has further proved on record extract of the register brought by him as Ex.P13 to Ex.P30 including translated version of Ex.P13 to Ex.P24 and Ex.P26. It is next proved by him that mutation No.604 in the name of Brij Lal was entered in his name on 18.2.1993, but did not place on record any copy thereof. However, during the course of cross examination, this

witness has admitted that estate of Parkash Chand had developed upon Brij Lal by way of registered Will in his favour and due to that mutation was entered in the record to the ownership of Brij Lal vide mutation No.604. So evidence given by appellants/plaintiffs themselves proves that property in dispute has been inherited by respondent/defendant by virtue of Will and not by natural succession. In similar circumstances, our Honourable High Court in case of **Balbir Singh Vs. Bant Singh- 1996 (3) RCR(Civil) 351**, was pleased to observe that where a son gets the property from his father by virtue of a Will, property in hands of the son should be considered as non-ancestral and it will be deemed as his personal property. No contrary law has been quoted before me.

So far as rulings quoted by learned counsel for appellants/plaintiffs are concerned, it is pertinent to mention here that I am in respectful agreement with dictum laid down in those rulings and do hold in consensus with Mr.Jatinder Arora that a Will like any other document has to be proved in terms of provisions of Indian Succession Act and Indian Evidence Act. But in the case in hand, there is no challenge to the Will, so no benefit of law laid down in rulings quoted by him can be extended to appellants/plaintiffs. There is no denial of the fact that a son by birth gets share in the ancestral property along with his father if it is ancestral property. In the case in hand, as referred to above, property in hands of Brij Lal is his personal property as plaintiffs/appellants have not brought any evidence to show that it is ancestral property. So, I need not refer facts of cases reported as **Charu Singh and another Vs. Amar Singh and others, 2012(1) RCR(Civil) 311, M/s Divya Exports Vs. M/s Shalimar Video Company and others, 2012(1) RCR(Civil) 154, Suraneni Lakshmi Vs. B.Venkata Durga Rao & another, 2012(1) Civil Court Cases, 364 (AP)-364, O.P.Sharma Vs.Ashok**

Bohara, 2012(1) Civil Court Cases, 372 (Rajasthan), Shugan Chand Vs. Bachni Devi & another, 2010(2) Civil Court Cases, 716 (P&H) and Kammana Sambamurthy (D) By Lrs. Vs. Kalipatnapu Atchutamma(D) & others, 2011(1) Civil Court Cases, 236 (SC).”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the 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 Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus 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 wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

July 10, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No