

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

(1)

RSA No. 1458 of 2016 (O&M)

DATE OF DECISION : 25.09.2017

Smt. Dhappo Devi and others

.... APPELLANTS

Versus

Ramswarup

.... RESPONDENT

(2)

RSA No. 1586 of 2016 (O&M)

DATE OF DECISION : 25.09.2017

Smt. Dhappo Devi and others

.... APPELLANTS

Versus

Dalip Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. J.P. Sharma, Advocate,
for the appellants.

* * *

AVNEESH JHINGAN, J.

This judgment shall dispose of RSA Nos. 1458 and 1586 of 2016 filed by the plaintiffs against the judgment and decree dated 02.09.2015, whereby the learned first appellate court dismissed two appeals filed by the plaintiffs and upheld the judgment and decree dated 13.03.2012 passed by the learned trial court dismissing two suits of the plaintiffs for

declaration and permanent injunction.

The plaintiffs filed two suits, i.e. civil suit No. 476 of 2003, titled as Smt. Dhappo Devi and others versus Dalip Singh and others; and civil suit No. 213 of 2002, titled as Smt. Dhappo Devi and others versus Ram Swarup Singh. Both the suits were consolidated and main case was treated as Smt. Dhappo Devi and others versus Dalip Singh and others. (Hereinafter parties shall be mentioned as they have been stated in suit).

The plaintiffs claimed that 1/6th was well defined share in suit land which is ancestral and defendant No.4 Ram Swarup Singh *Karta* of the family had no right to alienate 1/6th share of the plaintiffs, after 23.11.1998 i.e. the date of death of husband of appellant/plaintiff No.1. Further, it was prayed that alienation of the land by defendant No.4 in favour of defendant No.1 Dalip Singh vide sale deed No. 1398 dated 31.10.2002 was null and void and was liable to be set aside. It was alleged that defendant No.1 Dalip Singh being stranger cannot take possession of the land. A consequential relief of injunction was sought to the effect that the defendants be restrained from interfering in the cultivating possession of the plaintiffs over the suit property.

The plaintiffs claimed that the ancestral coparcenary property in the hands of late husband of plaintiff No.1 was coparcenary property till his death. Further, it was pleaded that defendant No.4 divided the suit property between himself and his five sons, some time before the death of Smt. Indira Gandhi. It was claimed that Rajinder Singh (husband of plaintiff No.1) was

given plot measuring 2 Kanals and pucca houses in about half Kanal land and Bhud land having less value measuring 4 Killas and he was cultivating the same. It was pleaded that the said land was mortgaged by Rajinder Singh to Ved Pal Singh for ₹ 20,000/-. Thereafter, Ved Pal Singh transferred the same to Ganga Ram for ₹ 20,000/-, which was got released by plaintiff No.1 by paying ₹ 20,000/-. The plaintiffs pleaded that since the revenue record was in the name of defendant No.4, he alienated the land comprised in killa No. 36//2 (9-12) to Dalip Singh vide sale deed No. 1398 dated 31.10.2002 in spite of the fact that the suit was pending. It was alleged that relying upon the sale deed, Dalip Singh was bent upon to destroy the crops, sown by the plaintiffs, therefore, they filed a suit for declaration to the effect that they be declared as owners in possession of 1/6th share out of the total land and the sale deed be declared as illegal, null and void. The other suit was for injunction.

On notice, written statements were filed by defendants No.1, 2 and 4. Thereafter, replications to the respective written statements were also filed by the plaintiffs.

From the pleadings of the parties, the trial court framed issues.

Plaintiff No.1 appeared herself as PW.1 and Ganga Ram Soni was examined as PW.2. The plaintiffs produced agreement for mortgage Ex.PW1/A, jamabandi for the year 1999-2000 Ex.P2, jamabandi for the year 1956-57 Ex.P3, jamabandi for the year 1956-57 Ex.P4, mutation No. 549 Ex.P5, mutation No. 676 Ex.P6, certified copy of sale deed No. 1398 dated

31.10.2002 Ex.P7, jamabandi for the year 1961-62 Ex.P8, documents in Urdu language Ex.P9 to Ex.P17 and their Hindi translations mark PK to mark PQ.

The defendants examined Dalip Singh DW.1, Girwar DW.2, Prabhu Singh DW3, Hanuman DW4, Vedpal Singh DW5, Rajesh Kumar Clerk, Record Room, D.C. Office, Narnaul DW6, Surinder Singh, Reader City Magistrate Narnaul DW7, Ram Sawrup DW8 and Harbans DW9. The defendants also relied upon documents, i.e. sale deed No. 1398 dated 31.10.2002 Ex.DW1/B, form in respect of insurance policy Ex.DW9/B, nakal rapat dated 9.10.2001 mark DA, copy of ration card mark DE and application moved by Sher Singh to Superintendent of Police, Narnaul mark DF.

The learned trial court, after considering the evidence and witnesses, dismissed both the suits holding that the plaintiffs failed to prove family settlement and that they were in possession of the suit property. It was further held that the plaintiffs could not prove their exclusive possession of the suit property. The learned trial court found that the plaintiffs were not entitled to declaration and injunction.

Aggrieved of the said judgment and decree, two first appeals were preferred by the plaintiffs. Vide the impugned judgment and decree, the learned first appellate court dismissed the appeals and upheld the judgment and decree passed by the learned trial court.

In the present Regular Second Appeals, learned counsel for the

appellants instead of pressing the questions of law framed in the grounds of appeals argued that the Karta i.e. Ram Swarup Singh defendant No.4 had no power to sell the ancestral property. No other issue was raised at the time of hearing.

Before dealing with the argument of learned counsel for the appellants, the evidence brought on record and the facts need to be looked into.

The case of the plaintiffs was that the suit property was ancestral property, meaning thereby that it was an accepted position that the entire property is ancestral property. The claim put forth was that the share of Rajinder Singh was well defined $\frac{1}{6}$ th share of the total property. For this purpose, reliance was placed upon a family settlement alleged to be entered into some time before the death of Smt. Indira Gandhi. On this basis, it was alleged that Ram Swaroop Singh defendant No.4 was not competent to sell the land to Dalip Singh defendant No.1.

In order to discharge their onus that they were exclusive owners in possession of their $\frac{1}{6}$ share, the plaintiffs examined Smt. Dhappo Devi plaintiff No.1 as PW1. She tendered her affidavit Ex.PW1/A and reiterated the contents of the plaint. PW.2 Ganga Ram testified that the suit property remained in his possession from 1997 to 2002 in lieu of ₹ 20,000/-. He stated that in July, 2002, plaintiff No.1 Dhappo Devi paid him ₹ 20,000/- and got redeemed the property.

On the other hand, defendant No.1 Dalip Singh while appearing

as DW1 reiterated the contents of the written statement. DW.2 Girwar, who was Ex Sarpanch of the village, deposed that the suit property was in possession of defendant No.4 who was owner of the suit property and that the plaintiffs had not mortgaged this land. DW.5 Ved Pal Singh testified that his father Ram Swarup Singh never partitioned the suit property and that Dhappo Devi was never in possession of the disputed land.

There is no dispute on perusal of the evidence, mutations and jamabandis that the suit land is agricultural in nature and is ancestral land of Ram Swarup Singh. The issue now arises is whether the suit land came in the hands of Rajinder Singh (deceased) in a family settlement.

The plaintiffs have miserably failed to prove this fact. No evidence was brought to show that the plaintiffs were in possession of the suit property. Apart from the oral assertion, family settlement was not substantiated by the plaintiffs.

Family settlement was not reflected in the revenue record. Ex.P2 jamabandi for the year 1999-2000 shows that Ram Swarup is owner in possession of the entire land. From this, it can be assumed that Ram Swarup Singh was holding the entire suit land as Karta of the family. PW.1 Dhappo Devi in her cross-examination stated that the partition deed was in writing and land was divided amongst Sukhpal Singh, Narpal Singh, Rajpal Singh, Ved Pal Singh and Rajinder Singh and one killa was given to her mother in law, but no such written document was brought on record.

In order to show that the plaintiffs were in exclusive possession

of the suit land, a plea was taken that the land was leased in favour of one Ved Pal Singh. Copy of agreement of lease Ex.PW1/A was brought on record showing that the suit property was leased out by Rajinder Singh in favour of Ved Pal Singh. But when Ved Pal Singh appeared as DW5, this agreement was not put to him. He denied that he ever took the land on lease after paying a sum of ₹ 20,000/-. Apart from that, the lease agreement was for two years, which required compulsory registration under Section 17 of the Registration Act, 1908. However, the said document was not registered.

The issue raised by learned counsel for the appellants has to be answered in this background.

It is established that the land in dispute was the ancestral property which was not partitioned and Ram Swarup Singh being Karta of the family had sold a part of the land, which was challenged. The sale deed Ex.P7 itself proves that the land was sold as there was need of money. The said finding has not been challenged nor it has been alleged that the sale consideration was used by the Karta for immoral purposes. The challenge to alienation of the land cannot be accepted.

The utilisation of the money raised is not an issue in the present case. The law in this regard is well settled. In **Suresh and another Versus Fateh Singh and others**, 2013 (46) RCR (Civil) 403, this Court observed as under :-

“6. The powers of the father to sell coparcenary property were not unrestricted. The sales, however, could be effected even without joining

the sons (i) for family necessities and (ii) for family benefit. Family necessity has been understood to mean any necessity which creates an obligation to the family to undertake and consequently, and debt contracted by the father even for his personal needs, so long as it was not for immoral or illegal purpose would be taken as supported by necessity. The sales of property which a father could support therefore ought to be for a reason which was a binding necessity. The binding necessity, as we have seen, would include an obligation to discharge an antecedent debt, namely, a debt which is antecedent in point of time to the date of sale.”

Further, in **Sukhdev Singh (since deceased) and others Versus Charanjit Kaur and others**, 2015 (27) RCR (Civil) 181, this court observed as under :-

“The reference to consideration on the findings of both the Courts below, if taken together would clearly reveal that the entire consideration as recited had been fully proved. The Appellate Court still did not grant a relief for specific performance only on the ground that the defendant had contended that it was a coparcenary property and that therefore, the defendant could not be compelled to execute a sale. This finding of the Appellate Court in affirmation of the trial Court is legally untenable.

It will be wrong to assume that a father-coparcener that acts as a Karta has no power to sell the ancestral property without joining the sons. On the other hand, the power of a Karta to sell exists even without joining the son and limitations in the law as recognized by Mitakshara law and applied by Courts admit only of two factors: (i) the sale shall be for binding necessity and (ii) and /or shall have family benefit. What constitutes a binding necessity is invariably a question of fact and the preponderance of authority is that if it is for discharge of antecedent debt, it must be taken as binding on the family.”

As per the law enunciated above, it is settled that the Karta could have sold part of the ancestral land. The plaintiffs having failed to successfully challenge the sale deed, the consequential result is that defendant No.1 Dalip Singh becomes owner of land comprised in specific Killa No. 36//2 purchased by him from the sole owner Ram Swarup Singh. In such circumstances, no fault could be pointed out in the judgments and decrees passed by the courts below.

During the course of hearing, learned counsel for the appellants could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

The cogent findings recorded by the learned first appellate court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the first appellate court and the same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeals are bereft of merit and without any substance, thus these must fail.

Resultantly, the instant Regular Second Appeals are dismissed, however, with no order as to costs.

September 25, 2017 ndj	(AVNEESH JHINGAN) JUDGE
Whether speaking/reasoned	Yes
Whether Reportable	Yes