

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

**RSA No. 3329 of 2016 (O & M)
Date of Decision:-10.05.2017**

Smt. Preeto and others

...Appellants

Versus

Smt. Chinto Devi

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. D.K. Bhatti, Advocate
for the appellants.

HARI PAL VERMA J.

The appellants-plaintiffs have filed the present regular second appeal against the judgment and decree dated 25.4.2016 passed by learned Additional District Judge-I, Panchkula, whereby their appeal against the judgment and decree dated 30.4.2015 passed by learned Additional Civil Judge (Sr. Divn.) Kalka, was dismissed.

Briefly stated, appellants-plaintiffs (hereinafter called 'the plaintiffs') have filed a suit for declaration and permanent injunction to the effect that they are coparceners of the Joint Hindu Family property as detailed in the plaint. The property is ancestral in nature. Declaration has also been sought of the sale deed bearing certificate No.852/1 dated 23.3.2000, allegedly executed by late Shri Rajinder Kumar son of Paras Ram son of Kirpa Ram in favour of defendant regarding the land measuring

1 bigha 4 biswas out of the total land and the sale deed dated 23.3.2000 is illegal, null and void without any legal necessity of the family and being ancestral property, it is not binding upon the rights of the plaintiffs. The husband of the plaintiff No.1, namely Rajinder Singh son of Paras Ram and father of plaintiffs No.2 and 3 (Ram Karan and Reena respectively) has sold the suit land to the respondent-defendant (hereinafter called 'the defendant') Chinto Devi for a sum of Rs.40,000/- by way of sale deed dated 23.3.2000. Rajinder Kumar had expired on 06.12.2002. The plaintiffs were Gujjar by caste and therefore governed by Hindu and Punjab Agricultural Customary Law regarding succession and alienation in Gujjar community. The coparcener in this community is not permitted to alienate the ancestral property without there being a legal necessity or benefit of the family. Earlier Kripa Ram was owner in possession of the suit land and he had five sons, namely, Ram Kishan, Paras Ram, Sant Ram, Mast Ram and Ram Karan. After the death of Kripa Ram the land was inherited by five sons including Paras Ram and after the death of Paras Ram, the land was inherited by his widow Parsani and three sons namely, Shish Ram, Balak Ram and Rajinder. Thus, the husband of plaintiff No.1 namely Rajinder Kumar inherited the land of Shri Kirpa Ram to the extent of 1/20th share. In the year 2000, Rajinder Kumar was in dire need of money, therefore, he approached the defendand and her husband, namely, Ram Nath for obtaining a loan of Rs.30,000/-. Accordingly, the loan amount was advanced by the defendant to Rajinder Kumar on usufructuary mortgage for a period of 12 years. After a period of 12 years or earlier the land of

Rajinder Kumar was liable to be redeemed on payment of principle amount along with interest. Rajinder Kumar expired on 6.12.2012. Therefore, in March 2012, plaintiff No.1 approached the defendant to get the land redeemed, which was earlier mortgaged by Rajinder Kumar to the defendant, but the plaintiff No.1 was surprised to know that the defendant had got forged a sale deed dated 23.3.2000 bearing document No.852/1 measuring 1 bigha 4 biswas executed by Rajinder Kumar. Rajinder Kumar had never executed the sale deed and had merely availed loan of Rs.30,000/- on mortgage of the said land. Plaintiff No.1 requested the defendant to hand over the possession of the said land to her and to admit the plaintiffs as lawful owners of the Joint Hindu Family property being coparceners and legal heirs of Rajinder Kumar but she refused. Hence, the present suit.

Defendant had filed the written statement taking preliminary objections regarding lack of cause of action, applicability of rule of estoppel, concealment of true and material facts as well as maintainability. However, on merits it was submitted that earlier a civil suit titled as 'Gurnam vs. Chinto' has been filed by the plaintiffs through one Gurnam, who is nephew of plaintiff No.1 and cousin of plaintiffs Nos.2 and 3. The said suit is pending and in that suit plaintiff has sought relief of permanent injunction against the defendant, but this fact has been conveniently concealed by the plaintiffs in the present suit. It has been denied that the plaintiffs are Gujjar by caste and are governed by Hindu and Punjab Agricultural Customary Law. He denied that earlier land was owned by one

Kripa Ram, from whom the said land was inherited by his five sons including Paras Ram, grand-father of the plaintiffs. Defendant has also denied that her husband had advanced a loan of Rs.30,000/- to the father of plaintiffs Nos.2 and 3. In fact the land in question was sold by Rajinder Kumar to the defendant for a valuable sale consideration through sale deed dated 23.2.2000.

The plaintiffs have merely sought a relief of declaration of their ownership being coparceners of Joint Hindu Family property comprised in different khasra numbers as well as declaration of the sale deed dated 23.2.2000 being illegal. Plaintiff No.1 has examined herself as PW1 and placed her affidavit (Ex.PW1/A) in support of her testimony. She has reiterated the averments made in the plaint. However, during her cross-examination she has admitted that her husband Rajinder Kumar had sold some other property out of the total land measuring 5 bighas inherited by him. He had got registered some sale deed other than the impugned sale deed dated 23.3.2000, and the defendant is having possession of the suit property since the date of execution of sale deed dated 23.3.2000. She has not examined any other witness from the village to depose that the plaintiffs are Gujjar by caste and they are governed by Hindu and Punjab Agricultural Customary Law, whereas, the defendant has denied if the parties are governed by Hindu and Punjab Agricultural Customary Law. PW2 Sanjeev Kumar, Registration Clerk has admitted the execution of the sale deed dated 23.3.2000 (Ex.P2). Similarly, PW3 Mehma Ram, who is a Lumberdar has also deposed that Rajinder Kumar had expressed his wish

on 23.2.2000 to mortgage his property with the defendant and Rajinder Kumar has obtained his signature on the document Ex.P2 at point 'A'. However, during cross-examination the veracity of the statement was impeached, where he has stated that he usually remain in Tehsil Kalka and does not know the number of documents, which have been attested by him as identifier of the parties in a single day. He is illiterate and never know the contents of the documents executed and have been attested by him. He used to attest the documents only on the request of the parties. Thus, this witness has fairly admitted that he used to affix his signatures as identifier only on the request of the parties without knowing the contents of the documents so executed between the parties.

The defendant has examined two material witnesses namely Manoj Kumar, deed writer as DW2 and Sardar Harpal Singh as DW3. DW2 Manoj Kumar has stated that the sale deed dated 23.3.2000 (Ex.P2) has been drafted by him and contents of the sale deed have been read over by him to both the parties. Both the parties after admitting the contents of the said documents affixed their signatures. Similarly, DW3 Sardar Harpal Singh, who is an independent witness, has deposed that on 23.3.2000 when he affixed his thumb impression over the sale deed as a witness, the sale consideration of Rs.40,000/- was passed by the defendant to Rajinder Kumar in his presence. Thus, on the basis of evidence so adduced by the parties, the trial Court has come to a conclusion that plaintiffs have failed to substantiate their pleadings. The plaintiffs have failed to adduce any oral or documentary evidence to substantiate the fact that the property in dispute

measuring 1 bigha 4 biswas subject matter of sale deed dated 23.3.2000 was lying ancestral in the hand of Rajinder Kumar or Rajinder Kumar has inherited the said property from his three previous degrees of generation. The plaintiffs have also failed to prove that the plaintiffs are Gujjar by community and are governed by Hindu and Punjab Agricultural Customary Law. Accordingly, the suit was dismissed.

Aggrieved against the aforesaid judgment and decree dated 30.4.2015 passed by the Additional Civil Judge (Senior Division), Kalka, the plaintiffs have filed the appeal before the lower Appellate Court, but the same was also dismissed vide judgment and decree dated 25.4.2016.

It is in the aforesaid circumstances, the plaintiffs have filed the present regular second appeal.

Learned counsel for the appellants has argued that the judgments and decrees passed by the Courts below are without appreciating the evidence available on record. The plaintiffs are Gujjar by caste and the land in dispute in the hands of Rajinder Kumar is ancestral. Though this fact has been denied in the written statement, but Ram Nath i.e. husband of the defendant has admitted the fact that the parties are Gujjar by caste and the land is ancestral. Similarly, the Courts below have not considered the fact that DW3 was attesting witness and he has not deposed regarding contents of the documents so executed between the parties and has submitted that he has put his thumb impressions just on the asking of the parties and the document was already prepared by Manoj Kumar, deed writer (DW2). Therefore, on the basis of statement of this witness, it cannot

be said that the documents, which were prepared, was a sale deed or mortgage. PW3 Mehma Singh, who was one of the attesting witness, has deposed during his cross-examination that the defendant had prepared the document and got the signature of Rajinder Kumar as well as Mehma Singh as witness by saying that the mortgage deed is to be executed on the documents, but the contents of the same were not explained to them. The plaintiffs have been non suited on the ground that the defendant is in possession.

I have heard learned counsel for the appellants.

The plaintiffs, who were required to stand on their own legs, have failed to adduce any evidence that the property in hand was ancestral in nature. No such record of the property has been adduced. The sale deed dated 23.3.2000 executed by Rajinder Kumar has duly been signed by the witnesses. The plaintiffs have neither led any evidence to show that Rajinder Kumar inherited the said property from his three previous degrees of generation nor they could substantiate the plea that the parties being Gujjar are being governed by Hindu and Punjab Agricultural Customary Law. Though there is allegation in the plaint that the sale deed dated 23.3.2000 executed by Rajinder Kumar is based on fraud but this allegation has not been substantiated by any evidence. The sale deed was duly registered in the office of Sub Registrar, Kalka and its execution has been proved on record with the examination of Sanjiv Kumar, Registration Clerk (PW2) and DW2 Manoj Kumar, who drafted the sale deed. Since there is no iota of evidence on record that the sale deed dated 23.3.2000 (Ex.P2) is

the result of fraud and a forged and fabricated document, rather it was for legal necessity as the appellants themselves admitted that Rajinder Kumar was in need of money and he had approached the respondent and her husband for loan. Therefore, the plea raised by the appellants is itself contradictory.

This Court does not find any illegality in the judgments and decrees passed by the Courts below being based on concurrent findings of facts.

No other point is argued.

Since no substantial question of law is involved in the case, present appeal is dismissed.

May 10, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No