

RSA No. 3608 of 2015 (O&M)

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

RSA No. 3608 of 2015 (O&M)

Date of Decision: 21.8.2017

Darshan Singh

.....Appellant

Vs.

Swaran Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Gulzar Mohd., Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned concurrent findings of facts recorded by both the learned courts below, whereby his suit for declaration was dismissed by the learned trial court vide its impugned judgment and decree dated 3.12.2013 and his first appeal was also dismissed by the learned first appellate court vide its impugned judgment and decree dated 12.12.2014, plaintiff-appellant has approached this Court by way of present regular second appeal, for setting aside the abovesaid impugned judgments and decrees.

Brief facts of the case, as recorded by the learned first appellate court in para No.2 of its impugned judgment, are that plaintiff filed the suit for declaration against the defendants, alleging that Jagir Singh was owner in possession of the suit land measuring 47K-12M which was inherited by him from his father Utram Singh and Uttam Singh inherited the aforesaid land

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from his father Sohail Singh to the extent of their respective shares in the Joint Hindu Family property and the nature of the land was ancestral one. During the life time of Jagir Singh, he was constituting a Joint Hindu Family along with his father Uttam Singh and the Joint Hindu Family was owning and possessing Joint Hindu Family properties including agricultural land, residential house and other properties. Jagir Singh was married to Gurbachan Kaur alias Bachan Kaur who has since expired. Jagir Singh expired on 7.4.2007. From the loins of Jagir Singh, plaintiff Darshan Singh took birth on 22-10-1960. The plaintiff has a birth right in the estate left behind by Jagir Singh, as the plaintiff was also a member of the Joint Hindu Family. Jagir Singh and Gurbachan Kaur alias Bachan Kaur were not having good relations and Jagir Singh turned out Gurbachan Kaur @ Bachan Kaur, mother of the plaintiff from the matrimonial home and the plaintiff was brought up by his mother in the house of her parents and Gurbachan Kaur alias Bachan Kaur breathed her last in her parents house.

It was further alleged that the plaintiff, in the year 1992, shifted to U.S.A and whenever thereafter, he used to come to India, he used to see his father, serve him and provide necessities to him from time to time and defendants No.1 and 2 were the sons of Malkit Singh-uncle of the plaintiff. In order to usurp the property of Jagir Singh, defendants no.1 and 2 forged and fabricated two sale deeds in their favour which were never executed by Jagir Singh nor these bear his signatures. Defendants No.1 and 2 got the mutation sanctioned in their favour on the basis of alleged forged and fabricated sale deeds and the same were liable to be set aside. No sale consideration was even paid by Swaran Singh and Jagdev Singh, nor they were in possession of any funds. The sale deeds were nothing but sham

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documents and were created by defendants no.1 and 2 just to exclude the plaintiff from inheriting the estate of his late father Jagir Singh. Except the plaintiff and Gurbachan Kaur alias Bachan Kaur, Jagir Singh was not having any other class-I legal heir. Jagir Singh was not having any legal necessity to transfer the property at a throw away price in favour of defendants No.1 and 2 without legal necessity. Joint Hindu Family co-parcenary property cannot be disposed of or transferred in favour of any other person. Hence both the sale deeds were required to be set aside being void ab initio. The plaintiff was residing in U.S.A. Defendants No.1 and 2 illegally took the property and now trying to alienate the same and to transfer the possession to some prospective buyers.

Defendants were put to notice. They appeared and filed their written statements, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to declaration as prayed for ? OPA
2. Whether the plaintiff is entitled to permanent injunction as alleged prayed for ? OPA
3. Whether exist relationship of son and father between the plaintiff and Jagir Singh ? OPA
4. Whether the property under the sale deed is ancestral property? OPA
5. Whether the property was sold by Jagir Singh without any legal necessity ? OPA
6. Whether the property was purchased by the defendants paying the due consideration? OPD
7. Whether the suit of the plaintiff is false, frivolous, fictitious and vague? OPD

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8. Whether the plaintiff has not come to the court with clean hands and suppressed material fact from the court?

OPD

9. Relief.

When called upon to prove his pleaded case, by leading cogent and convincing evidence, plaintiff availed many opportunities but did not lead any evidence, whatsoever, and finally, his evidence was closed by court order. Accordingly, suit of the plaintiff was dismissed by the learned trial court for want of evidence, vide impugned judgment and decree dated 3.12.2013. Plaintiff filed his first appeal, which also came to be dismissed by the learned Additional District Judge, vide his impugned judgment and decree dated 12.12.2014. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the plaintiff-appellant.

It goes without saying that appellant being the plaintiff, onus was on him to prove his pleaded case by leading cogent and convincing evidence. Pleadings alone will not be sufficient to decree the suit. Plaintiff also should not have waited for the alleged weakness of the case of defendants, so as to build up his case. Since the plaintiff-appellant did not produce any evidence, in support of his pleadings and that too, for no good reasons, he was bound to fail. That is what has been held by both the learned courts below. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

It is not even pleaded or argued case on behalf of the plaintiff-appellant that he was not granted sufficient number of opportunities by the learned trial court for leading his evidence. No explanation is forthcoming

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on behalf of the plaintiff-appellant as to why he could not lead his documentary as well as oral evidence before the learned trial court. Once the plaintiff was proceeding on such a casual approach, he was bound to fail.

The entire case of the plaintiff-appellant was revolving around the issue, whether the suit property was ancestral in nature or not. Once the plaintiff did not make even an effort to bring on record relevant evidence, he cannot blame anybody except himself about the result of litigation initiated by him. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned trial court as well as learned first appellate court committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 10 to 14 of its impugned judgment, which deserve to be noticed here, read as under:-

“10. The perusal of file of trial court in the present case, reveals that when the suit was fixed for evidence and plaintiff has not adduced any evidence then the trial court has passed the order of imposing of cost of Rs.500/- on 16-4-13 when adjournment was sought by the appellant to lead evidence. The trial court has passed the following order on 16-4-13:

“ Present :Sh.Deepak Rana,Advocate counsel for the plaintiff Sh.Gagan Arora, Adv. counsel for the respondent

No PW is present. Counsel for the plaintiff request for a date. Now the case s adjourned to 3.5.2013 for evidence of the plaintiff, subject to cost of Rs.500/- to be paid to the defendant. No further adjournment will be granted
Sd/- Amandeep Kaur/CJJD/Ldh.16-4-2013

Thereafter when no evidence was produced then the trial court on 30-5-2013 passed order of granting last opportunity and special opportunity and the suit was adjourned for 10-7-13. Order dated 30- 5-13 is as under:

Present: Sh.Amit Rai Proxy counsel for the parties.

No PW is present. Now the case is adjourned to 10-7-2013 for evidence of the plaintiff subject to last and special opportunity.

Sd/- Amandeep Kaur/CJJD/Ldh.30-5-2013

Thereafter the application for producing of documents was filed which was disposed of and again suit was adjourned for evidence of the plaintiff for 7-10-13 on 4-9-13. On that day also no evidence was produced and suit was again adjourned to 28-10-13 . No evidence was produced the suit was again adjourned to 15-11-13 then to 3-12-13 and no evidence was produced and on 3-12-13 the evidence was closed by order when no evidence was produced by the appellant/plaintiff and suit was dismissed.

So the perusal of the orders passed by the trial court it is clear that even orders of lessor gravity before closing the evidence by order i.e. imposing of cost was also passed and

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even the order warning the plaintiff to conclude the evidence in the shape of last opportunity were also passed .But even then the plaintiff has led no evidence. When no evidence was lead ,then court was left with no option but to close the evidence by order. When the plaintiff has been given large number of opportunities to lead evidence and even after passing of orders of imposing of cost, granting of last opportunity the appellant has not woke-up from the sleep to lead evidence, then the order passed by the court of closing the evidence is justified. There is no illegality in the order. Reference in this regard can be made to the law laid down Sohan Lal and others vs Maina Devi & Another 2010 ICC, page 283 and Gural Singh versus Lalita 1997 (2) P.L.J 704 .

So I do not find any illegality irregularity or perversity in the order passed by the trial court closing the evidence of the appellant/plaintiff by order. When there is no evidence on the file adduced by the plaintiff?appellant then the court has left no option but to dismiss the suit. ”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the judgments rendered by both the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a 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 law laid down

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by 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.

21.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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