

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4469 of 2015 (O&M)

Date of Order: 18th August, 2017

Gurdeep Singh

..Appellant

Versus

Pritam Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Bhardwaj, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

C.M.No.10711-C of 2015

Allowed as prayed for.

C.M.No.10712-C of 2015

Prayer in this application is for condonation of delay of 35 days
in re-filing the appeal.

For the reasons mentioned in the application, which is
supported by an affidavit, the delay of 35 days in re-filing the appeal is
condoned.

Application is allowed.

C.M.No.10713-C of 2015

Prayer in this application is for condonation of delay of 52 days
in filing the appeal.

For the reasons mentioned in the application, which is
supported by an affidavit, the delay of 52 days in filing the appeal is
condoned.

Application is allowed.

RSA No.4469 of 2015

Plaintiff-appellant has filed the present appeal against concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit for declaration, possession and permanent injunction, asserting that Pritam Singh-defendant no.1(father of the plaintiff), holds property, in dispute, as Hindu coparcenary property. Plaintiff claims that he is owner in possession to the extent of his share since the time of his birth. Plaintiff challenged two sale deeds executed by Pritam Singh, dated 30.10.2003 and 18.12.2003 and mortgage in favour of bank, Ex.DC, on the ground that such sale deeds and mortgage are illegal, null and void, being without legal necessity and consideration. Plaintiff had claimed that he had earlier also filed a suit, which was withdrawn as compromise was arrived at between the parties, on 28.05.2003.

Defendant no.1-Pritam Singh contested the suit and filed a written statement. It was denied that the property is joint family coparcenary property. Defendant no.1 claimed that the property is exclusive property of defendant no.1 and, therefore, the plaintiff and defendants no.4 and 5 (brothers of plaintiff) have no concern with the same. Defendant no.1 further asserted that plaintiff and defendants no.4 and 5 had pushed the defendant no.1 into a debt trap and he had to sell some part of the property and take loan for re-payment of the aforesaid debt.

After appreciating the evidence available on the file, the trial Court dismissed the suit. It was held that the plaintiff has not been able to prove that the property is joint Hindu family coparcenary property.

First appeal preferred by the plaintiff was also dismissed by the first appellate Court, after re-appreciating the evidence available on the file.

Learned first appellate Court also held that the compromise/agreement dated 28.05.2003 has not been proved on the file, although, the plaintiff was permitted to prove the writing by way of secondary evidence. Learned first appellate Court further held that the land was inherited by Pritam Singh from his father, who had inherited it from Rauni daughter of Narain Singh. It was held that share of Rauni daughter of Narain Singh had devolved upon Bhana, Gurdial Singh and Pritam Singh sons of Bachna Singh in equal share, therefore, the property was not ancestral.

Learned counsel for the appellant has submitted that the judgments passed by the Courts below are result of misreading of evidence. Counsel has further submitted that the plaintiff had produced excerpt. However, the Court has not taken into consideration the aforesaid excerpt.

I have considered the arguments addressed by the counsel for the appellant and with his able assistance gone through the paper book.

I do not find any merit in the submission of learned counsel for the appellant. It is proved on the file that share of Rauni daughter of Narain Singh had devolved upon Bhana, Gurdial Singh and Pritam Singh sons of Bachna Singh, vide mutation No.1466, dated 28.08.1986. Therefore, neither the property is proved to be joint Hindu family coparcenary property nor it is proved to be ancestral.

The excerpt produced by the plaintiff has rightly been ignored by the Court in view of the overwhelming evidence available on the file. Plaintiff has not led any substantial evidence to prove that the sale deeds executed by Pritam Singh were without legal necessity. It is the case of Pritam Singh-defendant no.1 that for re-payment of the debt, some property has been sold. It is proved on the file that the mortgage which was

challenged, has already been redeemed as the accounts of the bank has been settled.

Learned counsel for the appellant has not been able to point out any specific misreading of substantive evidence. Counsel for the appellant has further failed to bring to the notice of the Court any substantial questions of law or the ground, which may fall within the scope of Section 41 of the Punjab Courts Act, 1941, enabling this Court to interfere with the concurrent findings of fact arrived at by the courts below.

Hence, the regular second appeal is ordered to be dismissed.

18th August, 2017
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(ANIL KSHETARPAL)
JUDGE

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