

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

RSA No.464 of 2015 (O & M)

Date of decision :10.10.2017

Parveen Kumar and others

...Appellants

Versus

Dunger Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Kumar Sharma, Advocate
for the appellants.

ANIL KSHETARPAL, J.(Oral)

CM No.1281-C-2015

For the reasons recorded in the application, which is duly supported by an affidavit, delay of 200 days in re-filing the appeal is condoned.

Application is allowed.

CM No.14-C-2017

Application is under Order 41 Rule 27 CPC for permission to produce certified copy of Annexure A-6.

Learned counsel has submitted that these documents are part of the file of the trial Court. Therefore, the application for additional evidence is wholly misconceived because once the documents already part of the file, application under Order 41 Rule 27 CPC is not maintainable.

Application is dismissed.

Main Case

Plaintiffs-appellants are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiffs had filed a suit on 09.07.2012 for declaration

challenging the sale deed executed by their father Dunger Singh in favour of defendant No.2 on 24.10.2003. Plaintiffs had filed the suit through their mother as next friend and natural guardian. It was claimed that the sale deed is without legal necessity and the property is a joint Hindu Family Coparcenary property. Defendant No.1-Dunger Singh-father of the plaintiffs in an indirect manner supported the case of the plaintiffs. Defendant No.2 contested the suit. It was pleaded that defendant No.1 had sold the property through registered sale deed after receipt of valid consideration.

Learned trial Court after appreciating the evidence available on the file, found that the plaintiffs have failed to prove their case. The Court found that property is neither proved to be a joint Hindu Family Coparcenary property nor it is proved to be ancestral. The Court further found that the sale deed executed and registered is a legal and genuine document.

Plaintiffs filed the first appeal. Learned First Appellate Court after re-appreciating the evidence available on the file, dismissed the appeal.

Learned counsel for the appellants has submitted that the judgments passed by the Courts below are erroneous as it was for the purchaser-defendant No.2 to prove that the sale was on account of legal necessity. He has further submitted that certain revenue record was proved that the property is ancestral in nature.

I have considered the submission of learned counsel and with his able assistance gone through the case file. A perusal of the sale deed dated 24.10.2003 proves that the land in dispute was under the mortgage for a sum of Rs.56,000/- at the time of execution of the sale deed. The land is

still under mortgage and, therefore, defendant No.2 kept the mortgage money for repayment. It is further recorded in the sale deed that defendant No.1 needs the money for use in the family. Defendant No.2 is distant cousin of defendant No.1.

In these circumstances, it is proved that the sale was necessitated on account of repayment of the mortgage amount and family needs.

Next argument of learned counsel is that some revenue record has been produced on file to prove that the property is ancestral in nature, therefore, the findings of the Courts below are erroneous.

I have considered the said submission of learned counsel.

It is not in dispute that the plaintiff did produce jamabandi for the year 1938-39 and some other documents which have been discussed by the Courts below and found insufficient to prove that the property was ancestral in nature. Such findings are not shown to be perverse.

Still further, plaintiffs had no right to maintain a suit during the life time of their father.

In these circumstances, there is no scope for interference in the judgments passed by the Courts below.

Hence, this regular second appeal is dismissed.

10.10.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No