

RSA No. 6044 of 2016(O&M)

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

RSA No. 6044 of 2016(O&M)

Date of Decision: 21.2.2017

Harmanjot Kaur (minor) through her mother Akwinder Kaur

.....Appellant

Vs.

Dhanantar Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Janak Singh Bhinder, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J.

CM No. 15916-C-2016

Applicant seeks condonation of delay of 173 days in filing the appeal.

After hearing learned counsel for the applicant, instant application is allowed for the reasons stated therein. Delay of 173 days in filing the appeal is condoned.

CM stands disposed of.

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Unsuccessful plaintiff is in regular second appeal against the impugned judgments and decrees passed by learned courts below, dismissing her suit for declaration and permanent injunction.

Brief facts of the case, as noticed by learned trial court in para 1

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of its impugned judgment, are that land in dispute in the hands of the defendant Dhanantar Singh was ancestral and joint hindu coparcenary property. Parties to the suit, along with father of the plaintiff namely Beant Singh, constituted the coparcenary, governed by Hindu Law and thereby, during his life time, Beant Singh, father of the plaintiff, was having interest in the property in dispute to the extent of 1/3 share by birth. Plaintiff was also the coparcenar having interest in the land in dispute by birth to the extent of 1/3 share after the death of her father, namely Beant Singh, for having stepped into his foot steps. It was stated that some of the land in dispute was purchased by defendant namely Dhanantar Singh out of the income of the joint hindu co-parcenary property and as such, the whole of the land in dispute, in the hands of the defendant Dhanantar Singh, became the joint hindu co-parcenary property. Defendant Dhanantar Singh was having two sons, namely Beant Singh and Amandeep Singh. Beant Singh died and the plaintiff is his daughter. After stepping into the foot steps of Beant Singh, being his daughter, the plaintiff had become co-parcener to the extent of 1/3 share in the land in dispute and thereby, she was entitled to common use and enjoyment of the property in dispute as per her share. Defendant Dhanantar Singh was not entitled to transfer or alienate the land in dispute in any manner to defendant No. 2 namely Amandeep Singh or in favour of any other person, but despite that, defendant Dhanantar Singh executed transfer deed No. 878 dated 27.05.2010 in favour of defendant No. 2 namely Amandeep Singh, which was illegal, unlawful, null and void and without any consideration, executed with the malafide and dishonest intention to defeat the rights of the plaintiff and even mutation No. 7633 sanctioned in favour of defendant No. 2 namely Amandeep Singh was the

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result of connivance with the revenue officials, in the absence of the plaintiff. Plaintiff made repeated requests to the defendants to admit her claim, but they denied and hence the suit for declaration and permanent injunction.

Having been served, defendants appeared and filed their contesting written statement raising more than one preliminary objections. Plaintiff filed the replication. On completion of pleadings of the parties, following issues were framed by learned trial court:-

1. Whether the plaintiff is entitled to declaration as prayed for?

OPP

2. Whether the transfer deed No.878 dated 27.05.2010 executed by the defendant No.1 in favour of defendant No.2 alongwith mutation No.7633, is illegal, null and void and is not binding upon the rights of the plaintiff and liable to be set aside? OPP

3. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

4. Whether suit of the plaintiff is maintainable in the present form? OPP

5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD

6. Whether the plaintiff has concealed the material facts from the Court? If so its effect? OPD

7. Whether the plaintiff is estopped from filing this suit by her own act and conduct? OPD

8. Whether this Court has no jurisdiction to entertain and try the present suit? OPD

9. Relief.

With a view to prove their respective stands taken, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has failed to prove her case. Accordingly, her suit was dismissed, vide impugned judgment and decree dated 18.11.2014. Dissatisfied, plaintiff filed her first appeal which also came to be dismissed vide impugned judgment and decree dated 15.2.2016. Hence this regular second appeal at the hands of the plaintiff.

Heard learned counsel for the appellant.

The case of the plaintiff-appellant was revolving around the fact that suit property in the hands of defendant No.1 was ancestral in nature and he had no right to suffer the transfer deed in favour of defendant No.2, to the detriment of the plaintiff. However, plaintiff miserably failed to prove her pleaded case by leading cogent and convincing evidence. It is the settled principle of law that land would be treated as non ancestral until and unless, it is proved to be ancestral. Plaintiff failed to bring on record sufficient evidence in this regard, because of which, learned courts below have been found well within their jurisdiction, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

In fact, learned trial court in para 20 of its impugned judgment rightly recorded that plaintiff herself admitted that land in dispute did not come in the hands of defendant No.1 by way of survivorship, nor by way of natural inheritance, rather it was on the basis of Will dated 27.6.2000, executed by Gurdev Singh son of Bachan Singh. In this view of the matter,

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it can be safely concluded that admission being the best evidence, plaintiff had no case either on facts or in law. Once the plaintiff failed to prove that suit property was ancestral in the hands of defendant No.1, her case falls flat and the same was rightly dismissed by learned courts below, recording cogent and concurrent findings of facts, which deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of Hon'ble Supreme Court as well as this Court:-

1. Kesharbai @ Pushpabai Eknathrao Nalawade (D) by Lrs and another Vs. Tarabai Prabhakar Rao Nalawade and others, 2014 AIR (SC) 1830
2. Uttam Vs. Saubhag Singh and a others, 2016 (4) SCC 68
3. Hakam Singh Vs. Gurdev Singh, 1999 (4) RCR (civil) 210 (P&H)
4. Surjit Singh and others Vs. Gurmit Singh and others, 2010 (3) PLR 122 (P&H)
5. Hawa Singh Vs. Daya Nand and others, 2010 (21) RCR (civil) 918 (P&H)
6. Mohinder Kaur Vs. Pargat Singh and others, 2010 (3) RCR (civil) 491 (P&H)

Before arriving at a judicious conclusion, learned first appellate court reconsidered and rightly appreciated the factual as well as legal aspects of the matter. Cogent findings recorded by learned District Judge in para 13 of the impugned judgment, which deserve to be noticed here, read as under:-

The plaintiff who approached the Court to seek

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relief of declaration and permanent injunction claiming suit property to be ancestral coparcenary property in the hands of defendant no.1, was obliged to bring cogent and convincing evidence to establish her plea in this respect. However, she has not been able to bring any evidence, whatsoever in support of her plea that the suit property in the hands of defendant no.1 was Joint Hindu Family ancestral and coparcenary property as it transpires from the revenue record i.e. certified copy of mutation no.7614, Exhibit P8, sanctioned in favour of defendant no.1, placed on record on behalf of plaintiff, that the said mutation was sanctioned in favour of defendant no.1 on the basis of Will dated 27.06.2010 executed by his father Gurdev Singh. Even plaintiff Akwinder Kaur while appearing as PW-1 admitted during cross-examination that father of defendant no.1 had executed Will in favour of defendant no.1. As such, the said land cannot be said to have been devolved by way of natural succession and therefore, cannot be termed as ancestral property in the hands of defendant no.1. Furthermore, copy of mutation no.6079, Exhibit P5, placed on record of behalf of plaintiff also supports the plea of defendant no.1 as it transpires that the part of suit land involving mutation no.6079 was got by defendant no.1 by way of consent decree dated 16.03.1990 and as such, the said land also cannot be said be ancestral property of defendant No.1.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the

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impugned judgments rendered by the learned courts below. He also could not point out 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 judgments of 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.

(RAMESHWAR SINGH MALIK)
JUDGE

21.2.2017
Ak Sharma

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