

RSA No. 5513 of 2015 (O&M)

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

**RSA No. 5513 of 2015 (O&M)
Date of Decision: 27.9.2017**

Deepak Singh

.....Appellant

Vs.

Rajbir Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Zorawar Singh, Advocate for
Mr. N.S. Shekhawat, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby his suit for declaration, possession and permanent injunction was dismissed by the learned trial Court vide its impugned judgment and decree dated 18.1.2012 and his appeal was also dismissed by the learned first appellate Court vide its impugned judgment and decree dated 15.12.2014, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that defendant No.1 was owner in possession of the suit land mentioned in para No.1 of the plaint which was ancestral co-parcenary property of plaintiff and defendant No.1 and they both were members of joint Hindu family. As per plaintiff, he had right in the suit land by birth and mutation of inheritance of Bharta @ Bharat Singh was sanctioned only in the name of defendant No.1 as per practice of

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revenue department but defendant No.1 sold the land to defendants No.2 to 4 vide sale deed dated 21.09.1994 without any legal necessity. Plaintiff pleaded that defendant No.1 was man of vices who had no necessity to sell the land and defendant No.1 illegally spent the amount of Rs.1 lac given by defendant No.2 to 4 and the amount was not spent on any necessity of the family.

He also pleaded that the sale deed was got executed by serving liquor to defendant no.1 and defendant No.1 had no right and title to sell the land, hence, the registered sale deed no.350 dated 21.09.1994 was illegal, null and void and was liable to be set aside. Plaintiff further pleaded that defendant No.2 to 4 were forcible persons and were bent upon to illegally alienate the land and their possession on the land was illegal. Hence the cause of action arose and the suit was filed.

Having been put to notice, defendants No.2 to 4 appeared and filed their contesting written statement, raising more than one preliminary objections. Defendant No.1, who was none-else but father of plaintiff, did not appear and was proceeded against ex parte by the learned trial court. Plaintiff filed his replication. On completion of pleading of the parties, learned trial court framed the following issues:-

1. Whether the plaintiff is entitled for declaration, possession and permanent injunction as prayed for? OPP
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether the present suit is not within limitation? OPD
4. Whether the present suit is not maintainable? OPD
5. Whether the suit is bad under order 7 Rule 11 CPC? OPD

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5A Whether the sale deed no.350 dated 21.09.1994 was executed for legal necessity, if so to what effect? OPD

6. Relief.

In order to prove their respective stands taken in their pleadings, both the parties brought on record 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 the plaintiff has failed to prove his case for want of cogent and sufficient evidence. Accordingly, his suit for declaration, possession and permanent injunction was dismissed by the learned trial Court, vide its judgment and decree dated 18.1.2012. Plaintiff felt aggrieved and filed his first appeal, which also came to be dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 15.12.2014. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

The entire controversy was revolving around the one basic fact, as to whether suit property was ancestral in the hands of defendant No.1- father of the plaintiff and he was competent to suffer sale deed dated 21.9.1994 in favour of defendants No.2 to 4 without there being any legal necessity.

A combined reading of both the impugned judgments and decrees passed by the learned courts below would leave no scope for doubt that plaintiff has miserably failed to prove that property in the hands of his father-defendant No.1 was ancestral in nature. Neither any excerpt of relevant revenue record was produced on record, nor any concerned revenue official was examined as witness, so as to prove that the suit property in the

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hands of defendant No.1-father of the appellant was ancestral.

It is the settled proposition of law that every property is to be treated as non ancestral unless it is pleaded and proved to be ancestral. In the case in hand, plaintiff-appellant failed to plead and prove that suit property was ancestral in the hands of defendant No.1. In the absence of appropriate pleadings and cogent evidence, suit property has to be held to be non ancestral in the hands of defendant No.1. In this view of the matter, defendant No.1 would be very much competent to suffer the sale deed in question in favour of defendants No. 2 to 4. Consequently, defendants No. 2 to 4 would be bonafide purchasers for due consideration. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Even if the suit property is treated to be ancestral in the hands of defendant No.1 for the sake of arguments only and not established on record, still it has been held by both the learned courts below, while recording their concurrent findings of facts, that defendant No.1 did not execute sale deed in favour of respondents No. 2 to 4 without any legal necessity. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

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

1. State Bank of India Vs. Ghamandi Ram (dead) by his

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legal representatives Gurbux Rai, 1969 AIR (SC) 1330

2. Surjit Lal Chhabda V. Commissioner of Income-tax, Bombay, 1976 AIR (SC) 109

3. Surjit Singh and others Vs. Gurmit Singh and others, 2010 (3) PLR 122 (P&H)

4. Hawa Singh Vs. Daya Nand and others, 2010 (21) RCR (civil) 918

5. Gurmail Singh Vs. Rajbir Singh and another, 2014 (4) RCR (civil) 397

6. Jagdev Singh and another Vs. Major Singh and others, 2014 (82) RCR (civil) 214

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 21 to 25 of its impugned judgment, which deserve to be noticed here, read as under:-

Defendant no.2 to 4 in their written statement have simply denied the pleadings of plaintiff that the suit land was ancestral co-parcenary property of defendant no.1 and they have pleaded that defendant no.1 was owner in possession of the suit land and that defendant no.1 was in need of money and he was entitled to sell the land. At the time of death of Bharta, defendant no.1 was the sole survivor and the suit land devolved upon defendant no.1. After the birth of plaintiff, the nature of the land as ancestral co-parcenary property revived. Hence, the status of the property cannot be said to be disputed.

Plaintiff has alleged that defendant no.1 is a man of vices and he had no legal necessity to alienate the land. The disputed sale deed proved as Ex.P13 clearly mentions on page 2 that defendant no.1 required money for improvement of property and as it is so recorded in the sale deed, the onus was upon

plaintiff to prove that defendant no.1 had no necessity to alienate the land but plaintiff has only produced the oral evidence and no documentary proof has been produced to this effect.

As per pleadings of plaintiff, defendant no.1 is a man of vices and is habitual drunkard but no evidence has been led to show that defendant no.1 used to spend the amount on vices. It is also alleged by plaintiff that the sale deed was executed by defendant no.1 under the influence of liquor. PW1 Umed Singh and PW2 Krishan Singh both deposed in their affidavit that sons of Bhoop Singh i.e. defendant no.2 to 4 got the sale deed executed by making defendant no.1 drink liquor. But defendant no.1 himself has not challenged the sale deed and he has not appeared to contest the suit and to deny the pleadings of plaintiff that the sale deed was got executed by defendant no. 2 to 4 by administering liquor to defendant no.1. Non appearance of defendant no.1 to contest the case rather shows his collusion with plaintiff.

Defendants no. 2 to 4 have proved the copy of judgment dated 08.01.2008 Ex.D1 passed in appeal against the judgment and decree dated 15.10.2003 showing that plaintiff and defendant no.2 to 4 were party to the said case and the Advocate of plaintiff and defendant no.2 to 4 in the said case was the same Advocate. In that case the inheritance of Bharta was disputed. The judgment Ex.D1 shows that defendant no.1 had also sold the land of village Aram Nagar. Plaintiff has stated in his cross examination that his father was serving in Army and had retired in the year 1992-93 and the sale deed in question was executed in the year 1994 by defendant no.1 which shows that the land was sold by defendant no.1 after his retirement for he needed money for improvement of his property as recited in the sale deed Ex.P13 and as defendant no.1 was a retired Army man, it cannot be said that he executed the sale deed under any influence.

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As per pleadings of plaintiff, there was sufficient earning from the suit land and such earning was sufficient for livelihood of the family but plaintiff has not led any evidence regarding the earnings of defendant no.1 from the suit land at the time the sale deed was executed. Plaintiff was merely nine years old at the time of execution of the sale deed and he cannot be said to be having knowledge about the earnings from the land at the time the sale deed was executed by defendant no.1 in favour of defendant no.2 to 4. The evidence led on record shows that defendant no.2 to 4 purchased the land on payment of sale consideration and on the basis of revenue record showing defendant no.1 as owner of the land and defendant no.2 to 4 are the bonafide purchasers. In view of above observation, learned trial court has rightly held that plaintiff is not entitled to the relief prayed by him in the suit. The findings recorded by learned trial court are thus well reasoned and the same are hereby affirmed.”

When confronted with abovesaid cogent findings and asked to refer to any relevant revenue record, so as to establish the suit land to be ancestral in the hands of defendant No.1, learned counsel for the appellant had no answer and rightly so, it being a matter of record. So far as the revenue record in the form of jamabandi, is concerned, it fell short to prove the suit property to be ancestral in the hands of defendant No.1. It is so said, because, as noticed hereinabove, neither excerpt of jamabandis was proved on record, nor the concerned revenue official was examined in support of the plea, so as to establish the suit property in the hands of defendant No.1 as ancestral in nature. It goes without saying that appellant being plaintiff, onus was on him to prove his pleaded case by bringing on record cogent and convincing evidence but the same has been found conspicuously missing in the present case, thus, no case for interference, at the hands of this Court, is

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made out.

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

27.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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