

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

RSA-5964-2015 (O&M)

Date of Decision:07.03.2017

Yashpal Singh

.....Appellant

Versus

Onkar Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.C.L.Sharma, Advocate, for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Instant regular second appeal, at the hands of unsuccessful plaintiff, is directed against the impugned judgment and decree dated 31.07.2015 passed by the learned first appellate Court, whereby first appeal was dismissed and the impugned judgment and decree dated 24.03.2015 of the learned trial Court, dismissing the suit for declaration, were upheld.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that the plaintiff and defendant no.1 are the real brothers and the defendant no.2 is the wife of defendant no.1 and the defendant no.3 is the son of the defendant no.1. The father of the plaintiff and defendant no.1 namely Maru Ram son of Hira was owner of the land measuring 76K-08Mls and after death of Maru Ram the plaintiff and defendant no.1 and their mother Beaso Devi inherited the above said agriculture land and after the death of Beaso Devi the plaintiff and defendant no.1 had inherited the property of Beaso Devi vide jamabandi. The defendant no.1 being the elder in the family, the defendant no.1 look after and managed the above said landed property and control the whole income of the joint family from the land and other resources. The

defendant no.1 was in control of the joint income of the joint family of the plaintiff, even in the lifetime of their father Maru Ram and the mother Beaso Devi and the plaintiff was serving in Army and also sending money to the defendant no.1 in joint family funds. The defendant no.1 had purchased the suit property i.e. land measuring 25K-16Mls as detailed and described in the head note of the plaint, vide sale deed dated 14.11.1980, 31.10.1980, 31.3.1981 and 24.9.1982 in the name of his wife defendant no.2 and defendant no.2 had transferred the some portion of the suit property in the name of her son defendant no.3. Out of the income of the joint family, property/funds. The suit property was purchased by the defendant no.1 in the name of defendant no.2, by use of joint family funds, property and suit property become joint Hindu Family property as per the provisions of Hindu Law and by operation of law the suit property is joint Hindu family property, so in this way the plaintiff is entitled for ½ share being joint owner as joint Hindu Family property. The defendant no.2 had transferred the some portion out of the suit property in the name of defendant no.3, which is illegal and void and have no effect on the rights of the plaintiff. The plaintiff had requested the defendants many times to accept the claim of the plaintiff, but the defendants were adamant.

Having been served in the suit for declaration filed by the plaintiff claiming the suit property as joint Hindu family property, defendants put their appearance. Defendant Nos.2 and 3 filed their separate written statement(s), raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

“1. Whether the suit land is joint Hindu Family property ?

OPP

2. *Whether the plaintiff is entitled to the relief of declaration as prayed for?OPD*
3. *Whether the plaintiff is entitled to relief of permanent injunction as prayed for ?OPD*
4. *Whether the suit of the plaintiff is under valuable for the purpose of court fee and jurisdiction ?OPD*
5. *Relief.”*

With a view to substantiate their respective stands taken in their pleadings, both the parties produced their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff failed to prove his case. Accordingly, suit of the plaintiff was dismissed vide impugned judgment and decree dated 24.03.2015 passed by the learned trial Court. Dis-satisfied, plaintiff filed his first appeal which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 31.07.2015. Hence, this regular second appeal, at the hands of the plaintiff.

Heard learned counsel for the appellant.

The entire case of the plaintiff-appellant revolves around the one basic fact whether the suit property was joint Hindu family property or not. He being the plaintiff, onus was on him to prove his case by leading cogent and convincing evidence. However, he miserably failed to prove his case. When a pointed and specific question was put to the learned counsel for the appellant in this regard, to refer to any material or relevant evidence, he had no answer and rightly so, it being a matter of record. 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.

The abovesaid view taken by this Court also finds support from the judgments of this Court in **Samarvir Kaur @ Surinder Kaur Versus Sumanjit Kaur and others, 2015(2) PLJ 525**; and **Sant Ram Versus Parmanand, 1978 AIR (Punjab) 158**.

Before arriving at a judicious conclusion, learned first appellate Court re-examined, re-considered and appreciated true facts of the case, in correct perspective. Cogent findings recorded by the learned Additional District Judge in para 15 to 17 of its impugned judgment, which deserve to be noticed here, read as under:-

“The onus was upon the appellant-plaintiff to prove that the property in dispute was joint family property and not the self acquired property of respondent-defendant no.2 but the appellant- plaintiff remained failed to prove the property in dispute as joint family property and also remained failed to prove the fact that the respondent-defendant no.1 was the manager and incharge of the joint family property and from the income of the joint family property, he had purchased the property in dispute on the name of respondent-defendant no.2. This court has further found that appellant-plaintiff also remained failed to prove on record that the sale deeds executed in favour of Kaushalya Devi were without sale consideration or executed the sale deeds not with the money from her own pocket. Moreover the alleged sale deeds were not challenged even during the lifetime of Beaso Devi and the same are till today also not challanged by the appellant-plaintiff being without sale consideration.

Hence as per the evidence on record, it is proved that suit property purchased by Kamlesh Devi from her own income, which she earned as salary from the service and appellant-plaintiff remained totally failed to prove on record that the respondent defendant no.2 purchased this property from the income of the joint property through respondent-

defendant no.1. This court is of the opinion that there is no presumption that a family because it is joint possess, joint property or any property. The property jointly acquired by the members of a joint family with the aid of ancestral property is joint family property. The property jointly acquired by the members of a joint family without the aid of ancestral property may or may not be joint family property. Whether it is so or not is a question of fact in each case and accordingly the appellant-plaintiff as per the evidence on record failed to prove the said fact that the property was purchased from the joint family property.

This court is further of the opinion that it is settle principle of law that the appellant-plaintiff has to stand on his own legs and he has to prove his case by lead convincing and cogent evidence admissible in law to succeed in his claim. He cannot take the advantage of the weakness of the case of defendants. Furthermore pleading and proof. When the evidence is not in consonance with the pleadings and is at variance, as in this case, with it then the said evidence cannot be looked into or relied upon.”

A bare combined reading of both the impugned judgments and decrees would make it crystal clear that plaintiff-appellant had no case either on facts or in law. He failed to prove his case by producing any relevant evidence. It is also pertinent to note here that the plaintiff should not have based his case on the weakness of the case of the defendants. Plaintiff is supposed to stand on his own legs. However, in the present case, plaintiff could not prove his pleaded case because there was no sufficient evidence on record. In this view of the matter, 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.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments and decrees 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. Learned Courts below have recorded concurrent findings of facts which have been found based on sound reasons. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus 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 wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the instant regular second appeal stands dismissed, however, with no order as to costs.

March 07, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No