

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.3256 of 2014

Date of decision:3.8.2017

Rajinder

...Appellant

Versus

Kishan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.R.K.Sharma, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Defendant No.1 is in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit of the plaintiffs for declaration and permanent injunction was decreed by the learned trial court, vide its impugned judgment and decree dated 7.1.2011 and first appeal of defendant No.1 was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 15.10.2013.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of the impugned judgment, are that the plaintiffs filed present suit for declaration and permanent injunction with the prayer for a decree for declaring that the plaintiffs were owners and in possession to the extent of 1/10th share each and defendant No. 1 was owner and in possession to the extent of 1/10th share in the suit land mentioned in para No. 1 of the plaint and the relinquishment deed dated 27.9.2001, registered with the

Joint Sub Registrar, Palwal bearing its vasika No. 3894 and Mutation No.

4384 sanctioned on the basis of said relinquished deed were illegal null and void, ineffective and not binding on the rights of the plaintiffs in view of the terms of above mentioned family settlement dated 14.1.1988. Further, plaintiffs prayed that the revenue entries shown the name of defendant No.2 and in favour of defendant No.1 i.e. Mutation No. 4384 and subsequent entries were liable to be corrected. It was further prayed that defendant No. 1 be restrained from interfering into the peaceful, lawful, continuous and uninterrupted possession over the suit land mentioned in para No. 1 of the plaint by way of dispossessing them by force and by illegal means and by way of alienating the suit land or any portion thereof, in any manner, to any person. The plaintiffs averred that defendant No. 2 namely Ant Ram was their father and of defendant No. 1. Defendant No. 2 has been averred to be owner in possession to the extent of $\frac{1}{2}$ share in the agricultural land total measuring 97 kanals 10 marlas, which comes out to 48 kanals 3 marlas as detailed in para no. 1 of the plaint. The plaintiffs further submitted that all family members as well as relative gathered on 14.1.1988 and a family settlement was arrived between the parties to the civil suit. In the said family settlement dated 14.1.1988, defendant No. 2 relinquished all his right, title and interest in favour of present plaintiffs and defendant No. 1 in equal shares. Hence, the plaintiffs had become the owners in possession in the suit property up to the extent of $\frac{2}{5}$ th share i.e. $\frac{1}{10}$ th share each. However, the concerned entries could not be made in the revenue record regarding the said family settlement due to the mutual love and affection in the parties to this civil suit in September 2001, defendant No.2 asked the plaintiffs as well as defendant No.1 to get the revenue entries corrected as per the terms of the family settlement dated 14.1.1988, because he himself

had grown old. The plaintiffs were having full faith and confidence on defendant No.1, because he was their own brother. The plaintiffs sent defendant No.2 along with defendant No.1 on 27.9.2001 for the execution of a document regarding the change of ownership over the suit property as per the family settlement dated 14.1.1988. However defendant No.1 got executed the relinquishment deed from defendant No. 2 on 27.9.2001 in his own favour for the whole suit property. Defendant No. 1 got procured the thumb impressions of defendant No. 2 on the document by way of playing a fraud upon defendant No. 2 as well as the present plaintiffs. The Plaintiffs came to know about the execution of said relinquishment deed only in November 2001 when they inquired about the matter from the Halqa Patwari. The plaintiffs admitted the illegal and nonest nature of the relinquishment deed dated 14.1.1988, however, the defendants always refused to do so. The defendants were also bent upon to dispossess the plaintiffs from the suit property.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues:-

- i. Whether the registered relinquishment deed dated 27.9.2001 and mutation no. 4384 are illegal, null and void and not binding on the rights of the plaintiff on the grounds as alleged in the plaint? OPP.
- ii. If issue no.1 is proved, whether the plaintiffs are owners in possession to the extent of 2/5th share in equal share in the suit land? OPP.
- iii. Whether the plaintiffs are entitled for the relief of permanent injunction on the grounds as alleged in the plaint? OPP.
- iv. Whether the plaintiffs have no locus standi to file the present suit?

v. Whether the suit is not maintainable in the present form?

OPD.

vi. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiffs have duly proved their case by leading cogent and convincing evidence. Accordingly, suit of the plaintiffs for declaration and permanent injunction was decreed by the learned trial court, vide its impugned judgment and decree dated 7.1.2011. Feeling aggrieved, defendant No.1 filed his first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 15.10.2013. Hence this regular second appeal, at the hands of unsuccessful defendant No.1.

Heard learned counsel for the appellant.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below, would make it crystal clear that the plaintiffs have duly proved their case by leading cogent and convincing evidence. Admittedly, Ant Ram-common ancestor of the parties, was owner of the suit property, which he inherited from his forefathers. Nature of the suit property was duly established on record as ancestral in the hands of Ant Ram. Excerpts of relevant revenue record Ex.PW5/1, PW5/2 and PW5/4 have been duly proved on record, which would show that defendant No.2 Ant Ram inherited the suit property from his father Shri Jangi as per jamabandi for the year 1954-55. The suit property was earlier owned by father of defendant No.2 namely Shri Jangi. Earlier revenue record shown in the excerpt would make it clear that the suit property had been inherited

by Shri Jangi from his father Shri Jai Singh.

In fact, with the help of relevant revenue record, suit property has been duly proved to be ancestral in the hands of Ant Ram and this aspect was not even questioned by the learned counsel for the appellant before this Court. Thus, once the suit property was undisputedly ancestral in the hands of Ant Ram, he would have no right to execute the relinquishment deed dated 27.9.2001 in favour of defendant No.1 to the detriment of the plaintiffs. Having said that, this Court feels no hesitation to conclude that both the learned courts below rightly decreed the suit of the plaintiffs. Thus, the impugned judgments and decrees passed by the learned courts below deserve to be upheld.

So far as possession of plaintiffs on the land to the extent of their share was concerned, they duly established their continuous and peaceful possession over the suit property. Averments taken by the plaintiffs were duly corroborated by Gulab Singh, Rati Ram, Ashok Kumar and Nawal Singh, who have successfully stood the acid test of cross-examination. In this view of the matter, it can be safely concluded that both 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 view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court in **Tulsi & Ors. Vs. Chandrika Prasad & Ors., 2006 (8) SCC 322, Subhodkumar & Ors. Vs. Bhagwant Namdeorao Mehetre & others, 2007 (10) SCC 571** and **Rohit Chauhan Vs. Surinder Singh and others, 2013 (9) SCC 419..**

In the case in hand, defendant-appellant miserably failed to

prove any legal necessity of Ant Ram for the purpose of executing relinquishment deed in favour of defendant No.1-appellant. Plaintiffs were the members of coparcenary and they will have their right in the suit property right from birth. Said share of the plaintiffs in the joint land could not have been taken away even by defendant No.2 in the absence of any legal necessity. In this view of the matter, the learned courts below were justified in recording their concurrent findings of facts and the same deserve to be upheld, for this reason as well.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 10, 11 and 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“Considering the arguments advanced by learned counsel for both the parties and after going through the material placed on the file, this court is of the view that certainly lower court has rightly decided issues no.1 and 2 in favour of the plaintiffs-respondents, because perusal of the case file shows that land in dispute was ancestral one and Antram had no right to execute any relinquishment deed of the ancestral property without having any legal necessity and only in one case Karta can relinquish the property or alienate the same for the dire need of joint family and legal necessity, but there is no intention on the file to prove that there was any legal necessity to Antram for executing any relinquishment deed in favour of appellant-defendants.

“Perusal of record also shows that after the death of deceased Antram both the parties are the legal heirs and plaintiffs were having their share in the total property to the

extent of 2/5th share qua the whole property, whereas defendants-appellant remains owner of 1/10th share only. Once, it is proved that Antram had no legal necessity to execute the relinquishment deed then the mutation bearing No.4384 sanctioned on the basis of vasika No.3894 is illegal, null and void, ineffective and not binding upon the rights of the plaintiffs.

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“As a sequel to my above discussion, this court is of the firm opinion that there is no infirmity in the judgment and decree dated 7.1.2011, whereas it is established that the plaintiffs-respondents are owners in possession to the extent of 2/5th share in equal i.e. 1/10th share each and defendants-appellant is owner to the extent of 1/10th share and relinquishment deed dated 27.9.2001 bearing vasika no. 3894 and mutation no. 4384 are also wrong, illegal, null and void and the same are liable to be set aside and the respondents-plaintiffs are entitled to get corrected the revenue record. So by no stretch of imagination it can be concluded that judgment and decree dated 7.1.2011 is perfect and legal one and binding upon the rights of both the parties. Hence, the present appeal of the appellant-defendant, which is devoid of merits is hereby dismissed...”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any 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 view of the matter, no

interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

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

3.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No