

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1351 of 2017 (O&M)

Date of decision: 08.03.2017

Rajinder and another

... Appellants

Vs.

Smt. Kavita and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. J.S. Saneta, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Defendants are in regular second appeal against the impugned judgment of reversal dated 04.01.2017 passed by the learned first appellate Court, whereby judgment and decree dated 09.11.2015 of the learned trial Court, dismissing the suit for declaration and permanent injunction filed by the plaintiffs-respondents No.1 to 3 were set aside, allowing the first appeal of the plaintiffs.

Brief facts of the case, as noticed by learned first appellate court in para 2 of its impugned judgment, are that the case of the plaintiffs was that Anuj son of Rajender was their predecessor-in-interest and defendant No.2 was the real brother of deceased Anuj. The land measuring 19 kanals 15 marlas 4 sarsai being 3559/28485 share of land measuring 158 kanals 5 marlas comprised in khewat No.302 khatauni No.427 kitat 24 as per jamabandi for the year 2009-10

situated in village Kumharia, Tehsil & District Fatehabad (hereinafter referred to as the suit land) was inherited by defendant No.1 from his father Beg Raj vide mutation No.4204 dated 15.06.2005 and therefore, the said land was ancestral property in the hands of defendant No.1 qua the plaintiffs. It was further alleged that defendant No.1 had two sons namely, Anuj and Arvind and one daughter Aruna @ Poonam. Plaintiff No.1 was married with Anuj and out of their wedlock, plaintiffs No.2 and 3 were born. Plaintiff No.1 is legally wife of Anuj and as such, plaintiff No.1 was daughter-in-law and plaintiffs No.2 and 3 were grandson and grand-daughter of defendant No.1. Anuj had died on 13.10.2012 in a road side accident and after his death, defendants tortured plaintiff No.1 and threw the plaintiffs out of their home stating that Anuj had expired and they had no right to live in the house. Defendant No.1, in collusion with defendants No.2 and 3, executed and registered release deed No.5070 dated 10.10.2012 in favour of defendant No.2 without any legal necessity and without any consideration in order to deprive the plaintiffs of their share. Defendant No.1 was not competent to release the ancestral land to defendant No.2 because being governed by Hindu Law, plaintiffs No.2 and 3 had right since birth in the suit land. The defendants had not made any arrangement for the maintenance of plaintiffs and defendant No.2 was bent upon to alienate and transfer the suit land. If during the pendency of the suit, the defendants succeed in dispossessing them from suit land, then the plaintiffs were also entitled to possession on the basis of their title. The plaintiffs had repeatedly asked the defendants to admit their claim, but all in vain. Hence, the plaintiffs were constrained to file the suit seeking a decree for declaration to the effect that the plaintiffs were owners in possession of land measuring 4 kanals 18 marlas 4

sarsai comprised in khewat No.302, khatauni No.427 situated in village Kumharia, Tehsil and District Fatehabad and the release deed executed by defendant No.1 in favour of defendant No.2 and its resultant mutation No.4723 and subsequent entries in revenue record were wrong, against law and facts and as such, the same were liable to be set aside and the plaintiffs were entitled to get their names incorporated in the revenue record, as owners in possession in respect of land measuring 4 kanals 18 marlas 8 sarsai. The plaintiffs had also sought the relief of permanent injunction to the effect that defendants be restrained from alienating or transferring the above mentioned land and from dispossessing the plaintiffs from the same.

Defendants were served in the suit. Defendants No.1 and 2 filed their joint written statement, raising more than one preliminary objections. Defendant No.3 filed separate written statement, however, supporting the stand of defendants No.1 and 2. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiffs are entitled to relief of declaration as prayed for in the head note of plaint? OPP.
2. Whether the plaintiffs are entitled to relief of permanent injunction as prayed for in the head note of plaint? OPP.
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD.
4. Whether the plaintiffs have no cause of action or locus standi to file the present suit? OPD.
5. Whether plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.

6. Whether the plaintiffs have not come to the court with clean hands, if so its effect? OPD.
7. Whether the suit is bad for non-joinder of necessary parties? OPD.
8. Relief.

With a view to prove their respective stands taken in their pleadings, 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 the plaintiffs failed to prove their case. Accordingly, suit for declaration and permanent injunction filed by the plaintiffs was dismissed, vide judgment and decree dated 09.11.2015. Feeling aggrieved, plaintiffs filed their first appeal, which came to be allowed by the learned first appellate Court vide impugned judgment and decree dated 04.01.2017. Findings recorded by the learned trial Court on different issues were reversed and suit of the plaintiffs was decreed. Hence this regular second appeal at the hands of the defendants.

Heard learned counsel for the appellants.

A bare combined reading of both the judgments and decrees passed by the learned Courts below would show that the defendants-appellants have admitted that suit land was ancestral in the hands of defendant No.1-appellant namely Rajinder son of Beg Raj. Admission is the best evidence. Once the land was ancestral in nature in the hands of defendant-appellant No.1, late husband Sh. Anuj son of Sh. Rajinder, of plaintiff-respondent No.1-Smt. Kavita and father of plaintiffs-respondents No.2 and 3, would have his right and share in the suit land by birth.

Relationship between the parties is also not in dispute. Appellant-Rajinder had two sons, out of whom late Anuj was husband of plaintiff-respondent No.1 Smt. Kavita and father of plaintiffs-respondents No.2 and 3 Kartik (minor) and Garima (minor). Anuj died in road accident on 13.10.2012. Other son of appellant No.1 is Arvind, who is appellant No.2. Defendant No.3-proforma respondent Aruna @ Poonam is the daughter of Rajinder-appellant No.1.

It seems that since the relations between plaintiff No.1 and defendants were not cordial, defendant-appellant No.1, in collusion with defendants No.2 and 3, suffered a registered release deed in favour of his second son-defendant No.2, with a view to deprive the plaintiffs from their right of inheritance in the suit land. Since these basic and crucial facts could not be properly appreciated by the learned trial Court, dismissing the suit of the plaintiffs, the learned first appellate Court was well justified to set aside the judgment and decree of the learned trial Court, while passing the impugned judgment and decree dated 04.01.2017 and the same deserves to be upheld.

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. *Basavarajappa Vs. Gurubasamma and others, 2005 (12) SCC 290 (SC).***
- 2. *Rohit Chauhan Vs. Surinder Singh and others, 2013 (9) SCC 419 (SC).***
- 3. *Shreya Vidyarthi Vs. Ashok Vidyarthi and others, 2016 (1) RCR (Civil) 668 (SC).***
- 4. *Duli Chand Vs. Mahabir and others, 2000 (4) RCR (Civil) 176***

(P&H).

Before arriving at its just conclusion, learned first appellate Court rightly reconsidered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate Court in paras 15 to 18 of its impugned judgment, which deserve to be notice here, read as under: -

“It is pertinent to mention here that the defendants in their written statements have not denied that the suit land was ancestral in the hands of defendant No.1 Rajender and thus, the defendants also admit that the suit land is ancestral land. It is a settled law that the property inherited from father or grandfather will be ancestral property and therefore, the suit land being ancestral in the hands of defendant No.1 Rajender is the ancestral property for plaintiffs No.2 and 3 as they have a right by birth and their share out of the suit land could not have been alienated or transferred by defendant No.1 even if their father was alive and plaintiff No.1 has right in the same since her marriage with Anuj.

It is further pertinent to mention here that on the file there is no proof with regard to the plea that when Anuj husband of plaintiff No.1 was very serious due to the injuries suffered in a road side accident and then panchayat was convened with regard to repayment of loan amount taken by defendants to meet out the expenses incurred on treatment of Anuj and a family settlement took place. In his cross-examination DW1 Rajender defendant No.1 has deposed that an amount of ₹16.00 lacs was spent on the

treatment of his son Anuj, however, in the written statements, filed by the defendants, they have not pleaded that an amount of ₹16.00 lacs was spent on the treatment of Anuj as such the plea taken by the defendants that they have spent ₹16.00 lacs on the treatment of Anuj is beyond pleadings and cannot be considered.

It is further pertinent to mention here that PW1 plaintiff No.1 Smt. Kavita in her cross-examination has stated that to meet out the expenses on the treatment of her husband (Anuj) she had sold her ornaments for an amount of about ₹4.00 lacs and she brought an amount of ₹1.00 lac from her father and she has further stated that the ornaments were given to her in her marriage. DW1 Rajender (defendant No.1) in her cross-examination has deposed that Kavita (plaintiff No.1) was having 4½ Tola gold, which was given to her by them and one or two tolas gold were given to her by her father. Thus, the statement of DW1 Rajender that they had spent an amount of ₹16.00 lacs upon the treatment of Anuj stands falsified by his deposition in his cross-examination.

It is further pertinent to mention here that it is the pleadings of the defendants that at the time of release deed, plaintiff No.1 Smt.Kavita was present, but in the cross-examination, DW1 Rajender has deposed that at the time of release deed, two witnesses of their village, one Advocate, he himself and Arvind were present and release deed was effected, Kavita was not present. It is the pleadings of the defendants that when they

demanded money from Kavita, she showed her inability to repay the amount, but in his cross-examination, DW1 Rajender has stated that Arvind did not demand money from plaintiff Kavita, nor he (Rajender) demanded money from Kavita. DW2 Arvind defendant No.2 in his cross-examination has stated that when the release deed was effected, then signatures of Kavita were not obtained and at that time Kavita was not present there. Thus, the pleadings of the defendants stand falsified from the deposition made by defendant No1. Rajender and defendant No.2 Arvind in their cross-examinations.”

When specifically and repeatedly asked to refer to any relevant material or evidence to justify the malafide action of the defendants-appellants, taking away legitimate right of inheritance of the plaintiffs-respondents No.1 to 3 by way of patently illegal and malafide registered release deed No.5070 dated 10.10.2012, with a view to achieve their ulterior motive, learned counsel for the appellants had no answer and rightly so, it being a matter of record.

It seems that the nature was not so kind to the plaintiffs, while taking away their only bread-winner in his prime youth, but in such an hour of sorrow and grief, defendants became more crucial to the plaintiffs, instead of expressing their sympathy. Defendants left the plaintiffs in lurch and completely destitute, leaving them at the mercy of others. When the plaintiffs needed most, moral as well as financial support of the defendants, unfortunately defendants turned a blind eye towards the plaintiffs. Not only that defendants tried their level best, colluding with each other to grab the share of plaintiffs in the ancestral suit property, in which Anuj, predecessor-in-interest of the plaintiffs

had right and share by birth. These circumstances speak volumes about the unwarranted and unwanted conduct of defendants-appellants and this Court feels no hesitation to conclude that the appellants were not bonafide litigants. Learned first appellate Court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld, for this reason also.

So far as the alleged legal necessity to justify the release deed by defendant-appellant No.1 in favour of defendant-appellant No.2 is concerned, it was nothing but a concocted story put forth by the defendants. In fact, conduct of the defendants-appellants was so apparent that they were completely exposed. Defendants seriously contradicted themselves. Their evidence was contrary to their own pleadings. The cat came out of bag immediately when defendants No.1 and 2 were put to cross-examination as DW1 and DW2.

Their entire case was based on falsehood. Neither there was any legal necessity for defendant-appellant No.1 to suffer the release deed nor there was any supporting material on record. Learned counsel for the appellants, despite making his best efforts, could not substantiate any of his arguments and rightly so, because he was feeling handicapped in the absence of any relevant evidence available on record. In this view of the matter, no fault can be found with the cogent findings recorded by the learned first appellate Court and the impugned judgment and decree deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgment and decree passed by the learned first appellate Court. He also could not point out any question of law, much less substantial question of law, 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 regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 since no illegality has been found in the impugned judgment and decree passed by the learned first appellate Court, the same deserve to be upheld. The regular second appeal, having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground 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

08.03.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No