

RSA No. 4719 of 2014 (O&M)

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

RSA No. 4719 of 2014 (O&M)

Date of Decision: 24.7.2017

Diwan Singh

.....Appellant

Vs.

Krishna and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sanjay Mittal, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Plaintiff is in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for declaration and permanent injunction was dismissed by learned trial court vide its impugned judgment and decree dated 17.3.2006 and his first appeal also came be dismissed by the learned first appellate court, vide impugned judgment and decree dated 24.1.2014, thereby upholding the judgment and decree of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para No.2 of its impugned judgment, are that plaintiff-Diwan Singh filed suit for declaration to enforce right in Joint Hindu Family property and permanent injunction with the averments that parties to the suit were Hindu by religion and belong to Khudaliya Gautra and were governed by Mitakshara School. It was averred that defendants No.1 and 2, alongwith

defendants No.9 to 12, were members of joint Hindu family. It was pleaded that in joint Hindu family in Mitakshra school, a male child gets right in co-parcener property by way of birth. It was averred that the property mentioned in schedule-A attached with the plaint was joint Hindu ancestral co-parcenary property and the plaintiff since the time of his grand-father Rati Ram was co-owner and in joint possession of the suit property and the same was not partitioned till date and after expiry of Rati Ram, grand-father of the plaintiff, Shri Ram, eldest son became Karta and Manager of the joint Hindu family.

It was pleaded that on expiry of Rati Ram, the suit property was received by male members of the joint Hindu family of parties to the suit in male line succession by principle of survivorship. It was averred that during his life time, Rati Ram had $1/3^{\text{rd}}$ share in the suit property whereas defendants no.9 and 10 had $2/3^{\text{rd}}$ share and after application of Succession Act, 1956 for fiscal purpose only after death of Rati Ram, mutation No.169 dated 11.5.1991 was got sanctioned in favour of defendants No.3 to 10 on 17.5.1990 without knowledge and notice of the plaintiff whereas, in fact, the share of the parties to the suit after death of Rati Ram in the property mentioned in para no.5 of the plaint. It was alleged that after the death of great grandfather of the plaintiff, Rati Ram, grand father of the plaintiff, inherited the suit property in the male line of succession being co-parcenary property but in the revenue record for fiscal purposes only in the records of right, more share in the name of the Rati Ram was recorded as Rati Ram was Karta and Manager of joint Hindu family.

It was averred that the entry in the revenue record in the name of Rati Ram and defendants no.3 to 8 were wrong, illegal and not binding on

the rights of the plaintiff. It was averred that defendants No.1 and 2, in collusion with defendants No.3 to 8, secretly got effected a consent decree dated 27.2.1991 in civil suit No.18 of 1991 in case titled Rakesh Kumar versus Smt. Vidhya Devi and others and the said judgment and decree were wrong, illegal and void, as the value of suit property was more than Rs. 100 but proper stamp was not affixed on the alienation and decree required compulsory registration and no family settlement took place and the plaintiff was necessary party to the said suit.

It was averred that defendants No. 3 to 8 were exclusive owners of their respective shares and defendants No.1 and 2 had no pre-existing right and they had no share in the co-parcenary property to the extent of 1/4th share each. It was averred that the plaintiff requested the defendants several times to consider the impugned judgment and decree dated 27.2.1991 passed in civil suit No. 18 of 1991 and mutations No. 163 and 169 as wrong, illegal, null and not binding on the rights of the plaintiff but they refused to do so. It was prayed that a decree of declaration to the effect that the plaintiff had 9/96th share in the co-parcenary property mentioned in schedule-A attached with the plaint and that he was entitled to get the revenue record rectified and that he was entitled for separate possession after getting the suit property partitioned and that mutation No. 163 and 169 and judgment and decree dated 27.2.1991 were wrong, illegal, null and void and liable to be set aside be passed in favour of the plaintiff and against the defendants. It was also prayed that defendants No.1, 2 and 9 be restrained from alienating the land beyond their share, i.e. 9/96 share out of the disputed property and they also be restrained from making any type of interference in the rights of the plaintiff over the suit property.

Defendants were put to notice. They appeared and filed their joint written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is owner in possession of the property in dispute ancestral property qua the plaintiff?
OPP
2. Whether the disputed property has been inherited by the plaintiff being co-parcener in the HUF and has pre-existing right?OPP
3. Whether defendant No.10 is the Karta and member of the HUF family as alleged?OPP
4. Whether the plaintiff Late Rati Ram inherited the suit property in the male of the succession and under principle of survivorship and Rati Ram was co-owner of the house of 1/3 share as alleged if so to what effect?OPP
5. Whether the decree dated 27.2.1991 is null and void and binding upon the rights of the plaintiff as to what effect?OPP
6. Whether the plaintiff is entitled to the relief claimed for?If so, to what effect?OPP
7. Whether the suit is not maintainable in the present form? OPD
8. Whether the suit is beyond limitation?OPD
9. Whether the plaintiff has no locus standi to file the present suit?OPD
10. Whether the plaintiff is estopped from filing the suit by his own act and conduct?OPD
11. Whether the present suit is liable to be dismissed under Order 7 Rule 11 CPC?OPD
12. Whether the will executed by late Jaidai is a forged one and mutation based upon the alleged will is illegal,

null and void?OPD

13. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has failed to prove his case. In the absence of any cogent and convincing evidence available on record in favour of the plaintiff, his suit for declaration and permanent injunction came to be dismissed by the learned trial court vide impugned judgment and decree dated 17.3.2006. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 24.1.2014. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Relationship between the parties had never been in dispute. Basic and crucial aspect of the matter was that, after the death of common ancestor of the parties namely late Sh. Chunna Lal, his two sons, Umrav and Rati Ram, inherited property left behind by late Sh. Chunna Lal. Late Sh. Chunna Lal died in the year 1917-18 and mutation came to be sanctioned vide Ex.P1/1 in favour Umrav and Rati Ram. Umrav died issueless in the year 1938 and after his death, his widow Smt. Jaidai inherited one half share in the property left behind by late Sh. Chunna Lal. Mutation came to be entered and sanctioned in favour of Smt. Jaidai on 13.5.1938. Thereafter, up to jamabandis for the years 1984-85, Jaidai was being shown as co-sharer to the extent of one half share.

It has also gone undisputed throughout that none of the

descendants of Rati Ram-brother of Umray, ever challenged the inheritance of late Smt. Jaidai at any point of time. Plaintiff-appellant also never laid any challenge to the share of Smt. Jaidai to the extent of her one half share in the property left behind by her father-in-law namely late Sh. Chunna Lal. In view of these undisputed facts and circumstances of the case, appellant cannot claim himself to be a member of co-parcenery. It is so said because co-parcenery, if any, was broken the moment Smt. Jaidai, after the death of her husband-Umray, and Rati Ram inherited the property left behind by late Sh. Chunna Lal. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

Faced with the abovesaid factual as well as legal position, learned counsel for the appellant, despite making his best efforts, could not improve the case of the appellant and rightly so, because there was no supporting material available on record in favour of the appellant, so as to prove his case for a decree of declaration and permanent injunction. Earlier impugned judgment and decree dated 27.2.1991 would be only an insignificant event, because earlier to that, nobody, including the appellant, ever challenged the right of inheritance of Smt. Jaidai. In this view of the matter, it can be safely concluded that the learned trial court as well as learned first appellate court committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

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.

Cogent findings recorded by the learned first appellate court in para 11 of its impugned judgment, which deserve to be noticed here, read as under:-

“ While having due regards to the contentions of learned counsel for both parties, it is observed that plaintiff has claimed himself to be a coparcener in the suit property and has challenged the judgment and decree dated 27.2.91 and mutation No. 163 & 169. From the revenue records, i.e. jamabandi Ex.P! To Ex.PE, it is observed that the suit property had been prevailing in the name of Chunna Lal, father of Umrav and Rati Ram. In the year 1917-18, Chunna died and mutation Ex.P1/1 was sanctioned in favour of Umrav and Rati Ram. The names of Umrav and Rati Ram in the revenue record continued till 1937-38 as in evident from Ex.PJ to Ex.PQ. Umrav died in the year 1938 and name of his wife Jaidai was reflected in the revenue record in subsequent jamabandi and mutation Ex.P1/1 was effected and sanctioned in her favour on 30.3.1938. In the jamabandi for the year 1950-51, Jaidai and Rati Ram had been shown to be co-owner in equal share in the disputed property. Rati Ram vide mutation No.17 in the year 1954-55 and Jaidai, vide mutation Ex.PX/T in the year 1954-55 transferred 1/4th share out of total property in favour of Jaswant whereas Jaidai transferred ¼ share in favour of Shri Ram. In Jamabandi for the year 1950-51, Jaidai and Rati Ram were shown to be co-

owner in disputed property to the extent of $\frac{1}{2}$ share each. Till 1984-85, share of Shri Ram and Jaswant to the extent of $\frac{1}{2}$ share of Jaidai and Rati Ram to the extent of $\frac{1}{4}$ share in the entire property of was shown. Mutation No. 15 Ex.PY was in corporate and sanctioned on the basis of unregistered Will bequeathing remaining $\frac{1}{4}$ th share of Jaidai in favour of Atm Ram, Mahesh Kumar, Diwan Singh plaintiff and Geeta wife of Shri Ram. Thus, it is observed that Jaidai enjoyed her full right over $\frac{1}{2}$ portion of the entire property left by Chunna, after the death of Umrav Singh. In the year 1954-55, she transferred her $\frac{1}{4}$ th share in favour of Shri Ram by mutation No.16. Had the property in question been a co-parcenery, she would not have enjoyed the property as absolute owner after the death of Umrav. Similarly, Rati Ram transferred his $\frac{1}{2}$ share in favour of Jaswant. Had Rati Ram been co-parcener with Shri Ram and Jaswant and their descendants, he might not have alienated $\frac{1}{4}$ th share in favour of Jaswant arbitrarily. After expiry of Rati Ram, mutation No. 163 Ex.DW8/2 was sanctioned as per Section 8 of Hindu Succession Act in favour eight LRs of Rati Ram and mutation Ex.DW8/1 was sanctioned later on the basis of impugned judgment an decree dated 27.2.1991. After the death of Rati Ram, his six daughters succeeded $\frac{1}{32}$ share each in the entire property and they became absolute owner. There is no fraud against

the parties who transferred the property in favour of Rakesh Kumar and Ashok Kumar. The decree Ex.DW3/3 was never challenged by Shri Ram or Jaswant sons of Rati Ram. In these circumstances, the view of learned Civil Judge (Jr. Divn.), Rewari, that property in hand of Rati Ram after expiry of Chunna was his exclusive property is perfectly legal. The impugned judgment and decree dated 27.2.91 and mutation sanctioned on the basis of the said decree is perfectly legal. The decree was effected by sister and father of Rakesh and Ashok who were having some semblance of right in that property being near relative of ladies who suffered the decree. The said decree does not require registration as defendant No.3 to 8 were exclusive owner and there are no allegation of fraud. In these circumstances, the findings recorded by learned Civil Judge (Jr. Divn.), Rewari, are perfectly legal and valid and there is no illegality in the same and the same are upheld.”

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

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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.

24.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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