

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

**RSA No.2464 of 2017 (O&M)
Date of decision: 10.08.2017**

Ankit Garg

... Appellant

Vs.

Prem Chand (deceased) through LRs

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Anand Singh, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

It is the regular second appeal, at the hands of unsuccessful plaintiff, directed against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for declaration, mandatory injunction with consequential relief of permanent injunction, was dismissed by the learned trial Court vide its impugned judgment and decree dated 07.01.2013 and first appeal filed by the plaintiff was also dismissed by the learned first appellate Court vide its impugned judgment and decree dated 14.10.2016.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that parties to the suit were related to each other and they were the members of the Joint Hindu Family. It was pleaded that defendant No.1 was owner in possession of Joint Hindu Family ancestral

property, detailed in para no.2 of plaint. It was further pleaded that father of the plaintiffs was residing in the properties mentioned in (d) and (e). He died on 03.10.2002 and after his death, defendants took the plaintiff and his mother from U.P. to Karnal with the assurance that the plaintiff would be given due share in the suit properties and the business being run by them in the name and style of "M/s Prem Chand Sewa Ram". On assurance of the defendants, plaintiff and his wife came to Karnal and started residing with them. However, from the very beginning, intention of the defendants was malafide, as they sold away the properties mentioned in para No.1(d) and (e) and when the plaintiff-appellant asked them for their share in the sale consideration of the said properties, the defendants turned out the plaintiff with his mother from the Joint Hindu Family properties in illegal manner. It was pleaded that such act of the defendants amounts to an ouster of the plaintiff from his enjoyment of the joint properties and as such, he was entitled for the possession of the suit properties. Plaintiff convened several panchayats which asked defendants to admit his claim but the defendants kept on postponing the matter on one pretext or the other.

Having been served in the suit, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to declaration to the effect that he is owner of 1/4th share of the property described in para no.2(a) to 2(c) of the plaint? OPP
2. Whether the plaintiff is entitled to mandatory injunction directing the defendants not to oust the plaintiff from the suit

property? OPP

3. Whether the plaintiff is entitled to permanent injunction restraining the defendants from alienating the suit property without partition of the same? OPP
4. Whether suit of the plaintiff is not maintainable in its present form? OPD
5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Whether the suit of the plaintiff is not properly valued for the purposes of court fee and jurisdiction? OPD
7. Relief.

Both the parties brought on record their documentary as well as oral evidence, in support of their pleaded cases. 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. Accordingly, his suit for declaration, mandatory injunction with consequential relief of permanent injunction was dismissed by the learned trial Court vide its impugned judgment and decree dated 07.01.2013. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 14.10.2016. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

The entire case of the plaintiff-appellant was revolving around the fact that suit property in the hands of defendant No.1 was ancestral in nature. Plaintiff failed to prove that his father Radhey Shyam was son of defendant

No.1 Prem Chand. In fact, defendant Prem Chand had categorically denied his relationship with Radhey Shyam. In such a situation, a heavy onus was on the plaintiff to prove that his father Radhey Shyam was born out of the marriage of his grandmother Uma Devi and Prem Chand.

However, except his self-serving statement before the Court, plaintiff failed to lead any substantive evidence in this regard. Further, when during pendency of the suit, Prem Chand died, plaintiff-appellant did not seek any amendment in his plaint to put his claim over the suit property on the basis of succession. Having said that, this Court feels no hesitation to conclude 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.

Neither the plaintiff-appellant could prove the property to be ancestral in the hands of Prem Chand nor he could establish any relationship between his father Sh. Radhey Shyam and alleged grandfather Sh. Prem Chand. Plaintiff-appellant was presuming too much in his favour, without there being any basis for the same. Another important aspect of the matter was that Smt. Lata Rani, mother of the plaintiff filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005, claiming relief of shared household.

Plaintiff was also one of the applicant in that litigation. However, the application was dismissed by the learned Court of competent jurisdiction, holding that applicants failed to prove that they ever resided with the defendants. Interestingly, plaintiff did not examine anybody from the village, who could have deposed in favour of the plaintiff. In this view of the matter, it can be safely concluded 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, for this reason as also.

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

1. ***Kesharbai @ Pushpabai Eknathrao Nalawade (D) by Lrs and another Vs. Tarabai Prabhakarrao Nalawade and others, 2014 AIR (SC) 1830.***
2. ***Uttam Vs. Saubhag Singh and aothers, 2016 (4) SCC 68.***
3. ***Hakam Singh Vs. Gurdev Singh, 1999 (4) RCR (civil) 210 (P&H)***
4. ***Surjit Singh and others Vs. Gurmit Singh and others, 2010 (3) PLR 122 (P&H)***
5. ***Hawa Singh Vs. Daya Nand and others, 2010 (21) RCR (civil) 918 (P&H)***
6. ***Mohinder Kaur Vs. Pargat Singh and others, 2010 (3) RCR (civil) 491 (P&H)***

Before arriving at a judicious conclusion, the learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned Additional District Judge in para 16 of the impugned judgment, which deserve to be noticed here, read as under: -

“Now the next question arises whether there was a joint family consisting of Radhey Sham and defendants or not? According to plaintiff joint family consisting of his father and defendants were having five properties mentioned in para no. 1(a) to 1(e) of plaint. Property no.1(a) to 1(c) are situated in Karnal whereas property

no. 1(d) and 1(e) are in village Dadhera (U.P.) which were in possession of his father. In 1982 while shifting to Karnal, Prem Chand had taken some money from joint family funds out of which he purchased shop at Gur Mandi, Karnal. Thereafter, out of profits of shop of Gur Mandi, Karnal, he purchased other two properties. Therefore, properties at Karnal would also form part of joint family properties. However, this submission is again devoid of merits. Even as per the case set up by plaintiff Prem Chand along with defendants had shifted to Karnal in 1982. Radhey Sham was given a house and shop at village Dadhera which remained in his possession till his death. As discussed above, plaintiff has failed to prove that his father was born from loins of Prem Chand and therefore, he was not member of joint family. Otherwise also, even if for the sake of arguments, version of plaintiff is accepted that his father was in fact member of joint family but the status of family being joint came to an end when Prem Chand shifted to Karnal along with other defendants. Plaintiff has failed to lead any evidence to show that even after shifting of Prem Chand to Karnal, family remained joint. Though there is a presumption of jointness under the Hindu Law but that is rebuttable. The very fact that after giving a shop and house to Radhey Sham, Prem Chand shifted to Karnal itself shows that joint family status, if at all, was existing stand extinguished. This fact further found corroboration from the fact that plaintiff has sought relief in the present suit with regard to properties situated in Karnal only. He has not included those

properties which were in possession of his deceased father Radhey Sham. Moreover, he has stated that they came to Karnal and started residing with defendants who have sold those properties. However, plaintiff has failed to prove this aspect also. No date or time has been mentioned in plaint or affidavit of plaintiff when they shifted and started residing in house of defendants. Admittedly Smt. Lata Rani, mother of plaintiff had filed a petition u/s 12 of Protection of Women from Domestic Violence Act, 2005 claiming relief of shared household. Plaintiff was also one of the applicant in that litigation. But the application was dismissed by court holding that applicants have failed to prove that they ever resided with defendants. On the other hand defendants have denied to have sold the properties of Radhey Sham. In this situation, plaintiff could have easily examined someone from village Dadhera (U.P.) to prove this fact. But he has failed to do so. He had also not challenged those alleged sale deeds. Thus the ld. trial court has rightly held that plaintiff has failed to prove that suit properties were joint family properties in which he has a share.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the concurrent findings recorded 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 the 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 either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. The present 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

10.08.2017
vishnu

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