

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

RSA No.2682 of 2017 (O&M)

Date of decision: 18.05.2017

Gurpreet Singh @ Baljeet Singh

..Appellant

Versus

Ram Saran and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Deepak Arora, Advocate
for the appellant.

Daya Chaudhary, J.

CM No.6661-C of 2017

There is delay of 54 days in filing of the appeal.

Application is allowed as per the grounds mentioned therein
and delay of 54 days in filing of the appeal is condoned.

RSA No.2682 of 2017

Appellant-plaintiff-Gurpreet Singh @ Baljeet Singh filed a suit for declaration stating that he is owner to the extent of 11/30th share in the land i.e., 1/5th share being inherited from his father late Sh. Mansa Singh and 1/6th share in the ancestral coparcenary land from the date the plaintiff was born as coparcener in the Joint Hindu Family, by virtue of his birth. Said suit was contested by defendants by way of filing written statement and it was partly allowed only to the extent of relief of mandatory injunction by allowing him to use water for irrigation from the tube well installed in the joint land and the tractor, which was part of joint property was also granted.

However, the remaining relief i.e., the relief declaring share, validity of sale deed dated 05.06.2003, possession by way of partition and permanent injunction against alienation etc., was declined vide judgment and decree dated 15.09.2014.

Said judgment and decree dated 15.09.2014 was challenged by way of filing appeal before Ld. Additional District Judge, Chandigarh, which was also dismissed vide judgment and decree dated 28.11.2016.

After losing the case before both the Courts below i.e., the trial Court as well as the lower Appellate Court, the present second appeal has been filed by raising various grounds.

Learned counsel for the appellant submits that the property in dispute is the ancestral property and it cannot be sold by the *Karta* except for legal necessity. There was no evidence that there was any legal necessity as nothing was produced by the respondents-defendants to justify the alleged sale of property vide sale deed dated 05.06.2003. Learned counsel further submits that the lower Appellate Court has committed a wrong while affirming the judgment and decree passed by the trial Court and it has not been considered that Phuman Singh expired on 20.10.2012, the relief in the first appeal was not premature and as such, both the Courts below should have decreed the suit filed by the appellant-plaintiff. Learned counsel also submits that the suit was for declaration and possession by way of partition as well as for injunction. The appellant-plaintiff was having interest because of joint property and to avoid further alienation without legal necessity by *Karta* or other co-sharers. At the end, learned counsel for the appellant

submits that both the judgments/decrees of trial Court as well as the Lower Appellate Court are liable to be set-aside.

Heard arguments of learned counsel for the appellant and have also perused the judgments of both the Courts below as well as other documents available on the file.

The facts relating to filing of suit by the plaintiff-appellant, its dismissal, filing of appeal and dismissal thereof are not disputed.

The following issues were framed by the trial Court : -

1. Whether the plaintiff is entitled for declaration that he is owner to the extent of 11/30 share in land fully described in the head note of the plaint?OPP
2. If issue No.1 is proved whether the plaintiff is entitled for possession of above said land by way of partition by metes or bound?OPP
3. Whether the plaintiff is entitled for permanent injunction restraining the defendants, their family members and agents from alienating the suit land?OPP
4. Whether the plaintiff is entitled for mandatory injunction for allowing him to use the water for irrigation of the land from tube-well installed in the suit land and tractor Escort No. 377 CH-01-J-6340?OPP
5. Whether the suit is not maintainable as per Order 2 Rule 2 CPC?OPD
6. Relief.

The finding recorded by the trial Court is as under: -

“11. The onus to prove issue No.5 was upon the defendant. The plaintiff in the present case has sought declaration that the sale deed dated 05.06.2003 whereby land measuring 01.21 Marlas comprising Khewat/Khatauni No.137/155, Khasra No.40//33 situated in the abadi area of Village Maloya, U.T., Chandigarh by the Karta of the family defendant No.1 in favour of defendant No. 6 to 8 is illegal and avoid being without legal necessity. The defendants in the present case have averred that the above mentioned property was sold for the welfare of the family. In the present case it is admitted that the total land which the plaintiff claim to be joint land comes out to be proximately more than 82 kanals. The area sold vide sale deed dated 5.6.2003 is merely 01.21 marlas which is a very small/meagre part of the entire joint family property. The fact that a very small portion has been alienated is a strong indication that the karta Phuman Singh had alienated the same for legal necessity or welfare of the family or even benefit of the estate. Moreover, the plaintiff in his cross-examination as PW-1 admitted that his cousin sister was married though he does not remember the year or month of marriage. Also it is important to note that the plaintiff has not expressly denied the suggestion of the defendants that the marriage of daughter of Ram Singh i.e. the cousin of plaintiff was solemnized in 2003, rather claims that he does not remember. In the absence of a clear and specific denial by the plaintiff, it is taken to be admitted that the marriage took place in 2003.

Further, it is the suggestion of the defendants that the sale proceeds i.e around Rs.25,000/- were used in the marriage of the sister of the plaintiff. Hence, there is nothing on record to show that sale deed dated 5.6.2003 was without legal necessity, welfare of the family or benefit of the estate. Moreover, even otherwise the plaintiff had admittedly filed a suit for injunction restraining the defendants from alienating the property after attaining his majority, copy of which is Ex.P-5 and Ex.P-6. The said suit was withdrawn on 4.8.2006. The plaintiffs claims that he had withdrawn the suit in assurance of the defendants that they will not sell the property. However, there is nothing on record to indicate any such assurance by the defendants. Also the plaintiff in his cross-examination as PW-1 admits that he was in the knowledge of the sale deed dated 5.6.2003 at the time of the filing the earlier suit. Thus, if the plaintiff had to challenge the validity of the sale deed, the same could have been challenged when he filed the earlier suit. Thus, if the plaintiff had to challenge the validity of the sale deed, the same could have been challenged when he filed the earlier suit and the relief of declaration of sale deed being void sought in present suit is barred by the provision of Order 2 Rule 2 CPC. Thus, this issue is decided in favour of the defendants and against the plaintiff to the effect that the plaintiff is barred from challenging the validity of the sale deed in a subsequent suit which is present suit in view of the provisions of order 2 Rule 2 CPC.”

Similarly, the finding recorded by the Lower Appellate Court is

as under: -

“12 The appellant has claimed declaration that he is owner to the extent of 11/30 share in land described in the head note of plaint and is entitled for possession of said land by way of partition by metes and bounds. Admittedly, defendant No.1 is karta and property is joint family property. The suit has been filed by plaintiff-appellant during life time of karta. Moreover, as per evidence brought on record although plaintiff has stepped into witness box as his own witness and proved affidavit Exhibit PA/1 and proved various documents jamabandi Exhibit P1, sale deed as executed by karta Phuman Singh for very small portion of the property Exhibit P2, Exhibit P3 is birth certificate of plaintiff himself, Exhibit P4 is bank deposit receipt in the name of Phuman Singh, Exhibit P5 is copy of plaint of earlier suit filed by present appellant-plaintiff for permanent injunction against defendants in this case, Exhibit P6 is written statement of earlier case. In his affidavit although he has stated all the facts as taken in the plaint. Even he has admitted the fact in his own affidavit that suit property is ancestral, inherited by Phuman Singh from his father. He has admitted that he was born in the joint Hindu coparcenary family, as such become joint owner. He has admitted that Phuman Singh defendant No.1 is karta of joint family property sold land measuring 0-1.21 marlas on 5.6.2003 in favour of defendants No.6 to 8. Sale deed is proved on record. Rest of the facts as taken in the plaint have been admitted. In cross-examination he himself he has demolished his own case when stated that earlier

also he filed case in the civil Court at Chandigarh wherein he appeared as a witness. However, later on same was withdrawn by him on 4.8.2006. He has admitted copy of order Exhibit D1 vide which earlier suit has been dismissed as withdrawn. No where he has reserved his right to file separate suit and no such permission has been granted vide order Exhibit D1. Plaintiff of this suit has already been proved by plaintiff himself as Exhibit P5. Although in a question put to him he answered that their family is not joint family which is against his own pleadings and examination in chief wherein he has stated that there is a joint family and Phuman Singh is karta. He has admitted filing of previous suit. He has also admitted that at the time of filing previous suit he was having knowledge of execution of sale deed by defendant No.1 being karta's property measuring 1.21 marla. He has also admitted in his cross-examination that there was marriage of daughter of his uncle Ram Singh which was solemnized by joint family. He has avoided to answer when marriage was there. Another witness is examined as Rajinder Singh of the same village. Although in examination in chief he has stated the facts taken in the plaint but in cross-examination he has admitted the case of defendants that property in dispute is HUF property. Defendant No.1 is karta of HUF family. He has also admitted all the facts of the case of defendants. Although other witness Tara Chand, Patwari, Circle Maloya has been examined as PW.3, Dhian Singh, Naib Sadar Kanugo as PW.4 who proved revenue record. So, itself it is established that property has

been inherited by Phuman Singh from ancestors and this property in the hand of Phuman Singh is joint family property. Certainly, plaintiff is not entitled for claiming share out of this joint family property unless it is partitioned. Moreover, the sale deed has been challenged but it is established that the sale deed is of very small portion of the property that was also for marriage of daughter of Ram Singh one of the family member, so it is for lawful necessity. The learned trial Court has rightly appreciated the evidence and law on this point and rightly returned the findings that plaintiff is not entitled for declaration to claim the ownership over one share of the property as property is joint family coparcenary property nor plaintiff is entitled to decree of declaration that sale deed executed by karta defendant No.1 Phuman Singh for the purpose of marriage of daughter of the family is in any way illegal. So, I uphold the findings of learned trial Court on both the issues No.1 and 2.

13 As regards findings on other issues regarding bar of second suit, plaintiff has admitted that earlier suit was filed for permanent injunction. He has also admitted that sale deed was executed earlier by the executant before filing earlier suit and he had knowledge of said sale deed which has now been challenged in the said suit. Learned trial Court has rightly returned findings in this respect that suit is barred under Order 2 Rule 2 CPC. As regards findings on other issues, regarding his right to use the tractor of joint family and also tubewell for irrigation of the joint family property, the same was

partly decreed. These findings of part decree has not been challenged by the defendants-respondents. So, in totality this Court is of considered view that learned trial Court has rightly returned the findings on all the issues and there is no legal infirmity in it. I uphold the same. There is no merit in the present appeal. So, same is hereby dismissed. Decree sheet be accordingly prepared. Record of trial Court be sent back along with copy of this judgment. Appeal file be consigned to the record room.”

It has been held in both the judgments that the area, which was sold vide sale deed dated 05.06.2003 is merely 01.21 marlas, which is very small part of the entire joint family property. Said small area was alienated by the *Karta*-Phuman Singh for legal necessity and for welfare of the family as well as for benefit of the estate. Plaintiff himself has admitted in his cross-examination while appearing as PW1 that his cousin sister was to be married and the amount of sale proceeds i.e., around ₹25,000/- was spent on her marriage, which shows that the amount spent was for legal necessity, for welfare of the family and for benefit of estate. The plaintiff also filed suit for injunction restraining the defendants from alienating the property on attaining the age of majority but said suit was withdrawn on 04.08.2006. The plaintiff has also admitted in his cross-examination that he was having knowledge of sale deed dated 05.06.2003 at the time of filing the earlier suit but he did not challenge the sale deed. In case, the plaintiff wanted to challenge the validity of the sale deed, it could have been challenged in the earlier suit. The relief of declaration of sale deed being void was barred by the provisions of Order 2 Rule 2 CPC and as such, the plaintiff-appellant

was debarred from challenging the validity of the sale deed in the subsequent suit in view of provisions of Order 2 Rule 2 CPC.

Accordingly, in view of the concurrent findings recorded by both the Courts below, I find no reason to interfere with the finding recorded by both the Courts below and as such, the present regular second appeal being devoid of any merit is dismissed.

18.05.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes