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

Date of decision : 14.02.2018

1.

RSA-1510-1991 (O&M)

Zakir and others

... Appellants

Versus

Ismail and others

... Respondents

2.

RSA-1507-1991 (O&M)

Zakir and others

... Appellants

Versus

Ismail and others

... Respondents

3.

RSA-1508-1991 (O&M)

Zakir and others

... Appellants

Versus

Ismail and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Vij, Advocate
for the appellant(s).

Mr. Amit Jain, Advocate
for the respondent(s).

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of three appeals bearing RSA
No.1510 of 1991 titled as “Zakir and others V/s Ismail and others”
dismissing the suit bearing No.281 of 1989, wherein challenge was laid to

the sale deed dated 08.07.1976 in respect of land measuring 17 kanals 7 marals (hereinafter called 1st suit), RSA No.1508 of 1991 titled as “Zakir and others V/s Ismile and others” dismissing the suit bearing No.282 of 1989 challenging the sale deed dated 09.06.1971 in respect of land measuring 20 kanals 11 marals (hereinafter called '2nd suit') and RSA No.1507 of 1991 titled as “Zakir and others V/s Ismile and others” dismissing the suit bearing No.283 of 1989, challenging the sale deed dated 22.06.1973 in respect of land measuring 23 kanals 17 marals (hereinafter called '3rd suit').

The facts are taken from the appeal bearing **RSA No.1510 of 1991.**

In all the suit, aforementioned, the appellants-plaintiffs are identical challenged the sale deeds executed by their father-Zumme Khan, as indicated above, on the ground that they were governed by the customs and had right in the property by birth, which was ancestral at the hands of their father, who could not sell the property, except for legal necessity. He was a drunkard, gambler and had immoral habits, even the consideration reflected in the sale deeds was never made. Zumme Khan died in the year 1977, leaving behind the plaintiffs being sons. Plaintiff Nos.1 to 3 were born in the year 1968, 1971 and 1974, respectively.

The defendants challenged the aforementioned suits by filing the objections on the premise that the suits were not maintainable as no declaration was sought. The sale was for a valuable consideration as the land was subject to the mortgage for the reason that their father had taken a loan and he could not repay the loan, resulting into, execution of the sale deeds.

The trial Court dismissed the suit vide judgment and decree dated 01.02.1990 and the appeal having laid before the lower Appellate Court also met with the same fate, in essence, dismissed vide judgment and decree dated 10.05.1991.

Mr. Sanjay Vij, learned counsel appearing on behalf of the appellants-plaintiffs submits that both the Courts have committed illegality and perversity in dismissing the suit as it has been proved on record that Zumme Khan was drunkard and spoiled man as was having immoral habits. The defendants miserably failed to prove on record that they were *bona fide* purchasers for a valuable consideration nor any reasonable inquiry was made. Sufficient evidence had been placed on record to establish that they had right in the property by birth and the property at the hand of their father was ancestral, thus, urges this Court for setting aside the findings under challenge.

Mr. Amit Jain, learned counsel appearing on behalf of the respondents-defendants submits that the suit *ex facie* was not maintainable as sale deeds were not challenged, even the suit was not filed within the reasonable period on acquiring the majority, for, the suit was filed in the year 1983. The customs so called had not been proved on record. The parties, who are admittedly were Muslims, therefore, they were not governed by Hindu Law, even otherwise, no documentary evidence i.e. revenue record, to show the nature of the property as ancestral, had been placed on record, thus, urges this Court for dismissal of the appeals.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Vij, for, the plaintiffs miserably failed to discharge the

onus in support of the pleadings in the plaint, as indicated above. No documentary evidence to connect the property, which had been sold by their father, to be ancestral in nature had been placed on record. Since, the parties were Muslims by religion, even, customs so *ibid* had also not been proved on record to establish that they had right by birth, therefore, they were not governed by Hindu Law. Even, there is no challenge to the sale deeds. In view of the ratio decidendi culled out by the Hon'ble Supreme Court in “Satya Pal Anand V/s State of Madhya Pradesh and others” 2016 (4) RCR (Civil) 904, a registered document has to be challenged by filing a civil suit.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees of the Courts below as the same are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeals are dismissed.

14.02.2018

Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No