

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1029 of 2012 (O&M)

Date of Decision: March 12, 2018

Harjinder Kaur & others

...Appellants

Versus

Swaranjit Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Ajay Pal Singh, Advocate,
for the appellants.

Mr.G.S.Sidhu, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Appellant-plaintiffs are in Regular Second Appeal against the judgment and decree dated 23.3.2011, whereby the suit for declaration with consequential relief of permanent injunction claiming themselves to be owner in possession of the suit property being ancestral, joint Hindu coparcenary property by challenging the transfer deed dated 8.2.2005 registered on 9.2.2005 being forged and fabricated document and consequential mutation bearing No.2910 dated 26.4.2005, had been dismissed by the trial Court and the appeal preferred before the Lower Appellate Court was also dismissed.

The appellant-plaintiffs instituted the suit claiming ownership and possession of 287/6109 share of land measuring 305 kanals 9 marlas, described in the head note of the plaint on the premise that the parties were Hindu and were governed by Hindu Law having ¼ share of 287/6109 share

and for challenging the aforementioned transfer deed on the premise that Gurtej Singh son of Labh Singh, who died on 14.3.2007, was a coparcener of $\frac{1}{4}$ share of 287/6109 share. After his death, the plaintiffs became coparceners. Gurjant Singh also died and defendants No.1, 2, 5, 6 & 7 are his legal heirs. Rachhpal Singh died unmarried and issueless, whereas defendant No.3, in connivance with defendants No.1 and 2, transferred the said share 287/6109 of land measuring 305 kanals 9 marlas vide transfer deed dated 8.2.2005, registered on 9.2.2005 and mutation No.2910 dated 26.4.2005 sanctioned on the basis thereof.

Respondent-defendants No.1, 2, 3 and 5 appeared and contested the suit by taking preliminary objections qua locus-standi, cause of action and concealment. It was stated that the plaintiffs challenged the transfer deed but the same was not properly valued. It was also denied that the property was joint Hindu Family or the parties were coparceners. In fact, it was an attempt to harass the defendants. On merits, it was alleged that defendant No.3 Sujan Kaur widow of Labh Singh son of Jangir Singh executed the transfer deed dated 8.2.2005 registered on 9.2.2005 in sound disposing mind in favour of defendants No.1 and 2, namely, Swaranjit Singh and Smarjit Singh sons of Gurjant Singh son of Labh Singh, i.e., the grand children.

Replication was filed by controverting the averments made in the written statement and reiterated the same made in the plaint. The trial Court, on the basis of the pleadings of the parties, framed the following issues:-

“1) Whether the suit land is ancestral and joint Hindu family coparcenary property? OPP

2) Whether the plaintiffs are entitled for decree of

declaration as prayed for? OPP

3) *Whether the suit is within limitation? OPP*

4) *Whether the plaintiffs have no locus-standi and cause of action to file this suit? OPD*

5) *Whether the plaintiffs have not come to court with clean hands, if so, its effect? OPD*

6) *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*

7) *Whether the suit is barred by order 2 rule 2 CPC? OPD*

8) *Whether the defendants are entitled to special costs from the plaintiffs? OPD*

9) *Relief.”*

Plaintiffs examined Harjinder Kaur PW-1 and Malkiat Singh PW-2 and tendered into evidence certain documents, whereas the defendants examined DW-1 Smarjit Singh and DW-2 Manjit Singh. The trial Court, on the basis of the evidence, dismissed the suit and the Lower Appellate Court also dismissed the appeal.

Mr.Ajay Pal Singh, learned counsel representing the appellant-plaintiffs submitted that both the Courts below have committed illegality and perversity. Specific and cogent evidence has been led to prove that the transfer deed was forged and fabricated document. They were governed by the Hindu Succession Act and the property being coparcenary, the transfer could not have been done in the manner and mode, except for legal necessity. It has not come on record whether respondent No.3 Sujan Kaur had inherited the land from her husband or she purchased the land after selling 3 acres of land of Village Ahmedpur, which she inherited from her father, whereas revenue record produced by the plaintiffs showed that she inherited the land from her husband and deceased son, but the trial Court abdicated in not framing the proper issue. The relationship between the

plaintiffs/appellants and the respondents had been ignored, much less pedigree table. The findings on other issues were conjectural and, thus, urged this Court for setting-aside the findings under challenge.

Mr.G.S.Sidhu, learned counsel representing the respondent-defendants submitted that the plaintiffs miserably failed to prove that the property in the hands of Sujana Kaur was joint Hindu family and coparcenary property. It was Labh Singh, who had inherited the property from his mother and, therefore, could not have been ancestral property. Plaintiffs miserably failed to prove the character and nature of the property. Neither any expert has been examined nor any revenue record has been placed on record to establish the same.

I have heard the learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-plaintiffs.

It was incumbent upon the appellant-plaintiffs to place on record documents to show that the property at the hands of Labh Singh, the husband of defendant No.3 Sujana Kaur, was ancestral. Rather it has come on record that Labh Singh had inherited the property from his mother and, therefore, was not ancestral property. Being self-acquired property, Sujana Kaur had right to deal with the same in any manner, she wanted to do.

In my view, the plaintiffs have no right in the property as they failed to prove the same to be joint Hindu Family or coparcenary property. The plaintiffs were none else but Harjinder Kaur widow of Gurtej Singh son of Labh Singh and children. In fact, the dispute is between the daughter-in-law and the mother-in-law.

For the reasons stated above, the concurrent findings arrived at by the Courts below do not warrant inference to form a different opinion than the one arrived. The appeal is devoid of merit, much less any substantial question of law arises. Resultantly, the same is dismissed.

March 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No