IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2008 of 2012(O&M)

Date of decision: 3.10.2018

Rohtash Singh and another …..Appellants

VERSUS

Savitri and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sunil Garg, Advocate for the appellants.

Mr. Vikram Punia, Advocate for respondents No.2 to 5.

Mr. Harish Goyal, Advocate for respondent No.6.

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REKHA MITTAL, J.

CM No.5568-C of 2012

Prayer in this application is for condoning delay of 158 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Mr. Sunil Garg, Advocate, the application is allowed. Delay of 158 days in re-filing the appeal stands condoned.

Disposed of accordingly.

RSA No.2008 of 2012

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by the appellants/plaintiffs to challenge sale deed No.646 dated 26.09.2000 executed by their father Daya Chand in favour of Ramphal Saroha and Sunil Kumar, his son, has been rejected.

The plaintiffs/appellants are the sons of Sh. Daya Chand, arrayed as defendant No.3. Defendant No.1 is the real brother of Daya Chand and Sunil Kumar – defendant No.2 is the son of defendant No.1. Daya Chand - defendant No.3 has executed sale deed in question in respect of suit land for a sale consideration of Rs.3,25,000/-. The plaintiffs/appellants have challenged the sale deed primarily on two grounds. Daya Chand inherited 1/3rd share of suit land along with his two brothers out of land measuring 52 kanal 3 marlas detailed in para 2 of the judgment of trial Court, therefore, the disputed property is the ancestral and co-parcenary property qua the plaintiffs and defendant No.3 being members of Joint Hindu Family. Defendant No.3 is a man of bad habits and he had no care for himself and the plaintiffs and always remained under influence of liquor. Defendants No.1 and 2 had influence on defendant No.3 and got executed sale deed without payment of any consideration and by playing fraud upon defendant No.3. Defendant No.3 had no legal necessity to sell the suit land as he was not under any debt or liability to discharge nor was to perform any marriage. Defendant Nos.1 and 2 are bent upon to dispossess the plaintiffs from suit land and the plaintiffs would suffer irreparable loss if they succeed in their design.

Defendant No.3 filed written statement admitting case of the plaintiffs.

Defendants No.1 and 2 filed joint written statement and, in turn, raised preliminary objections inter alia that the suit is not maintainable in the present form; plaintiffs have no locus standi to file the suit; the plaint does not disclose any cause of action; suit has been filed in collusion with defendant No.3 and the suit has not been properly valued for the purpose of Court fee and jurisdiction. They have denied all the material averments raised in the plaint to impugn the sale deed in question. It is averred that parties to the suit are Jat and governed by customary law applicable to the Jat proprietors of erstwhile districts of Rohtak and Delhi of State of Punjab according to which question of Jats being governed by Hindu Law or constituting Joint Hindu Family amongst themselves does not arise. Sh. Sher Singh, father of defendant No.3 was the owner in possession of agricultural land, inherited by Bharto, his widow, Sama Kaur and Siria, daughters, Prem Chand, Ramphal and Daya Chand, his sons in equal share to the extent of 1/6th share each. Mutation of inheritance bearing No.2259 was sanctioned in the year 1965. Smt. Bharto, Sama Kaur and Siria executed registered gift deed in favour of Prem Chand, Ramphal and Daya Chand on 09.08.1965 and accordingly Prem Chand, Ramphal and Daya Chand became owners in possession of suit land to the extent of 1/3rd share each and mutation No.2833 was sanctioned on 16.09.1981. Defendant No.3 executed sale deed in question voluntarily for valuable consideration of Rs.3,26,500/-, received by him. He deposited an amount of Rs.3,25,000/- in his saving bank account No.14147 in the Central Bank of India on 26.09.2000. Later, said amount was transferred in the account of his wife Smt. Banwaro by defendant No.3.

The controversy between the parties led to framing of following issues by the trial Court:-

1. Whether the sale deed dated 26.9.2000 can be declared null and void, as alleged. If so to what effect? OPP

2. Whether the plaintiffs are owner in possession of the suit property? OPP

3. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD

4. Whether the plaintiffs have no locus standi or cause of action to file the present suit? OPD

5. Relief.

The parties were permitted to adduce evidence in support of their respective claims. Having heard counsel for the parties in the light of materials on record, the trial Court determined issues No.1 and 2 taken up jointly against the plaintiffs/appellants and while deciding issue No.4, it has been held that the suit is not maintainable as the appellants have not sought the relief of possession while seeking declaration and injunction by relying upon judgment of Himachal Pradesh High Court **Sita Ram Vs. Hari Krishan, 1999 (1) RCR 602.**

The appeal preferred by unsuccessful plaintiffs/appellants did not find favour with the Additional District Judge, Sonepat whereby the judgment and decree passed by the trial Court were affirmed.

Counsel for the appellants has assailed consistent findings of the Courts primarily on two grounds. The first submission made by counsel is that though the trial Court has rejected plea of the appellants that suit land was ancestral co-parcenary property in the hands of Sh. Daya Chand but the Court in concluding lines of para 13 of the judgment has held that the disputed property was Joint Hindu Family and Coparcenary Property of the plaintiffs and defendant No.3. It is argued that if suit land was Joint Hindu Family property of which Daya Chand was the karta, he was not competent to alienate the suit land except for legal necessity or benefit of estate. It is argued that as respondents No.1 and 2 have failed to plead and prove that sale by Sh. Daya Chand is either for legal necessity or benefit of estate, sale deed is liable to be set aside on this score alone.

Another submission made by counsel is that on 05.11.2000, in a meeting in which 12 Panchayats of different villages were associated, defendants No.1 and 2 agreed to return the land in question measuring 17 kanal 8 marlas and a writing to this effect was prepared but later defendants No.1 and 2 backed out of the said settlement.

Counsel representing the contesting respondents, on the contrary, has supported the judgments passed by the Courts. It is vehemently argued that the present suit filed by sons of Daya Chand is nothing but an abuse and misuse of process of law filed in connivance with Daya Chand – defendant No.3. The appellants have failed to substantiate that Daya Chand is a man of bad habits or the sale deed has been got executed by defendants No.1 and 2 taking advantage of weakness of Daya Chand of consuming excessive liquor and remaining under its influence. The appellants have failed to adduce satisfactory much less convincing and clinching evidence to establish their plea of fraud required to be proved akin to a criminal charge. Neither the suit property was ancestral coparcenary property in the hands of Daya Chand nor Daya Chand constituted Joint Hindu Family with the plaintiffs. Prior to the sale deed in question, Daya Chand sold plot measuring 16 marlas to Prem Chand, Ramphal on 06.06.1988 but the same was never challenged by plaintiffs or Daya Chand. It has further been argued that sale consideration of Rs.3,25,000/- was deposited in the account of Daya Chand which was later transferred by him in the account of Smt. Banwaro, his wife, rightly taken note of by the Courts to negate plea of the appellants that the sale is without consideration.

I have heard counsel for the parties, perused the paper-book particularly the judgments impugned.

Counsel for the appellants has not disputed that land measuring 52 kanal 3 marlas was previously owned by Sh. Sher Singh, father of Daya Chand. The estate left behind by Sh. Sher Singh was inherited by his class I heirs namely three sons, two daughters and widow on the basis of natural succession. Mutation No.2259 in the year 1965 was sanctioned in this regard. Later, Smt. Bharto, Sama Kaur and Siria three legal heirs of Sher Singh conferred their rights inherited from Sher Singh by way of registered gift deed executed in favour of Prem Chand, Ramphal and Daya Chand on 09.08.1965. The appellants have not raised a specific plea as to the year in which Sh. Sher Singh passed away. However, counsel for the appellants, in response to a query, would concede that Sher Singh passed away after the Hindu Succession Act, 1956 came into force. There is no evidence adduced by the appellants as to how Sher Singh became owner of land measuring 52 kanal 3 marlas. Keeping in view that Sher Singh passed away after commencement of the Hindu Succession Act, 1956 and was succeeded by all his Class I heirs on the basis of natural succession, it is difficult to accept plea of the appellants that any part of land in question was ancestral coparcenary property in the hands of Sh. Daya Chand in which the appellants being sons of Daya Chand acquired right by way of birth. This apart, part of the land came to share of Daya Chand on the basis of gift deed executed by Smt. Bharto, Sama Kaur and

Siria. In this view of the matter, the Courts have rightly rejected plea of the appellants that suit land was ancestral coparcenary property in the hands of Sh. Daya Chand.

Counsel for the appellants has sought to derive some advantage from the concluding lines of para 13 of the judgment of trial Court. The trial Court in the very same para has taken note of that Daya Chand inherited the land in question from his father Sher Singh on the basis of natural succession and received a part of it from his mother and sisters by way of gift deed, therefore, the disputed property cannot be held to be ancestral property of Daya Chand – defendant No.3 or the plaintiffs. It appears that the concluding observations of the trial Court holding the disputed property to be Joint Hindu Family and Coparcenary Property are the result of some confusion and the same are contradictory in view of discussion in the same para as well as succeeding paras of the judgment. In para 15, the Court has held that it is clear from evidence on record that plaintiffs are serving in the Army while defendant No.3 is running a tea vend at Narela and as such it can be inferred that defendant No.3 has voluntarily alienated suit land to his brother and nephew which appears to be an act of good management. Counsel for the appellants has failed to point out any materials on record that the appellants raised a plea that Daya Chand constituted a Joint Hindu Family with his sons and other family members and the suit land which was self acquired property of Daya Chand was ever treated by him as Joint Hindu Family Property in order to give a cause of grievance to be expressed by the appellants to challenge the sale deed executed by Daya Chand. In this view of the matter, the appellants cannot derive any advantage to their contention from the concluding lines in para 13 of the judgment of trial Court.

Daya Chand admitted claim of the plaintiffs that the sale deed is the result of fraud and without consideration. For the reasons best known, he did not appear in the witness box to say on oath that defendants No.1 and 2 practised fraud upon him and got executed sale deed without payment of any money. The very fact that Daya Chand withheld himself from the witness box goes a long way to draw an adverse inference against the appellants that story propounded by the appellants is not truthful and is the result of concoction.

As has been rightly argued by counsel for the contesting respondents, since the appellants have raised a plea of transaction being vitiated by fraud, it was obligatory for them to prove the same beyond reasonable doubt akin to a criminal charge. Counsel for the appellants has failed to point out any materials on record to discharge this legal obligation by them. On the contrary, Smt. Banwaro, mother of the appellants, appeared in the witness box and admitted that a sum of Rs.3,25,000/- out of sale consideration was deposited in the account of Sh. Daya Chand and later that money was transferred by Daya Chand in the account of Smt. Banwaro. This evidence falsifies and belies plea of the appellants that the sale is without consideration or deed has been prepared taking advantage of defendant No.3 being under the influence of liquor. The Courts have also held that the appellants have failed to adduce cogent evidence to establish that Sh. Daya Chand was addicted to liquor or remained under its influence rendering him incapacitated to understand his good or bad or become rational. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the Courts rejecting claim of the plaintiffs/appellants.

Much stress has been laid upon writing dated 05.11.2000 to contend that respondents No.1 and 2 had admitted their fault in a gathering of Panchayats of twelve villages. Perusal of copy of the plaint would reveal that the same does not make reference to any such gathering much less writing dated 05.11.2000 having been prepared. Counsel for the appellants has not disputed that writing dated 05.11.2000 does not bear the signatures of contesting respondents/defendants. In the given scenario, the Court in appeal has rightly held that the appellants cannot derive any advantage to their contention from writing dated 05.11.2010 to substantiate their plea that sale deed dated 26.09.2000 executed by their father is the result of fraud.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

OCTOBER 3, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no