

RSA No. 3531 of 2012 (O&M)

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

**RSA No. 3531 of 2012 (O&M)
Date of decision: 15.5.2018**

Santra and others

... Appellants

Versus

Anand Parkash and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sunny Bhardwaj, Advocate, for
Mr. Jitender Sehrawat, Advocate
for the appellants.

Mr. Vishwajeet Singh, Advocate, for
Mr. K.P. Singh, Advocate
for respondent No.1.

Mr. Narinder Singh Lubana, Advocate, for
Mr. Abhilaksh Grover, Advocate
for respondents No. 2 and 4.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiffs was dismissed by the trial court, vide judgment and decree dated 5.8.2008. As even the appeal preferred against the said decree failed, and was dismissed on 31.10.2011, they are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

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The plaintiffs filed a declaratory suit that the judgment and decree dated 13.6.1997, passed in Civil Suit No. 442 of 1997, titled as Anand Parkash Vs. Chhotu, was illegal, null and void. And, for injunction, restraining the defendants from interfering in the land comprised in the numbers specified in the cause in the title of the plaint, measuring 65K-15M to the extent of half share, i.e. 32K-17M.

Briefly, the case set out by the plaintiffs was that the suit property was ancestral and co-parcenary in nature in the hands of Chhotu @ Ram Karan-defendant No.3. Defendant No.3-Chhotu @ Ram Karan had four sons, i.e. defendants No.1, 2, 4 and late Mahender-predecessor-in-interest of the plaintiffs. Defendants No.1 and 2 filed a collusive suit qua the suit property against Chhotu @ Ram Karan, which was decreed on 13.6.1997. The said decree was invalid, as defendant No.3 could not alienate the suit property beyond his share. And even otherwise, the said decree was a result of fraud.

In the written statement filed on behalf of defendant No.1, it was disputed that the suit property was ancestral and co-parcenary in nature, but was purchased by Chhotu @ Ram Karan himself, and, thus, was his self acquired property. Therefore, the decree suffered by Chhotu in favour of defendants No.1 and 2 was valid. In fact, post death of Mahender, who happened to be the husband of plaintiff No.3, and father of plaintiffs No.1 and 2, his widow-plaintiff No.3 (Bala) performed second marriage in village Chhichhrana, Tehsil Gohana, District Sonapat. Further, she was given her share by Chhotu @ Ram Karan, which she alienated vide a sale deed dated 6.12.1999 in favour of defendant No.1 (Anand Parkash) and defendant No.4 (Prem).

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On a consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that burden of proof to prove that the suit property in the hands of Chhotu @ Ram Karan was, indeed, ancestral and co-parcenary, was upon the plaintiffs. However, they failed to lead any cogent evidence in this regard. Likewise, though the decree dated 13.6.1997, suffered by Chhotu @ Ram Karan, was alleged to be a result of fraud, but no such evidence was led to substantiate the said plea. In any case, Chhotu @ Ram Karan was arrayed as defendant No.3, who died during the pendency of the suit. Thus, nothing was brought on record to show that post passing of the decree dated 13.6.1997, Chhotu @ Ram Karan ever questioned the said decree or disputed its validity. Concededly, Mahender had died about 10 years prior to the filing of the earlier suit, i.e. Civil Suit No. 442 of 1997. None other than plaintiff No.3-Bala, admitted in her cross-examination, that post death of her husband, she went to her parental house, therefore, she was not even a member of the Joint Hindu Family at the time of institution of the earlier suit. During his cross-examination, DW2-Prem testified that Chhotu Ram was owner of 5 acres of land, and had four sons. Therefore, even if the land measuring 5 acres of Chhotu @ Ram Karan was conceded as co-parcenary property, still Mahendar would have entitled to only 1/5th share therein, which comes to 1 acre. And, concededly, plaintiff No.3 had sold a land measuring 1 acre in favour of defendants No.1 and 4. That being so, the only and the inevitable conclusion that could be reached: the suit filed by the plaintiffs was wholly devoid of merit.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusion arrived at by both the courts was either contrary to the record or suffered from any

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material illegality. No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

15.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:	YES
Whether Reportable:	NO