

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

300

RSA-4321-2012 (O&M)
Date of decision: 28.11.2018

RAJESH

... Appellant

Versus

SATISH KUMAR AND ANR.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Prateek Rathee, Advocate for the appellant.
Mr. Deepender Ahlawat, Advocate for the respondents.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration, permanent injunction with consequential relief of possession filed by appellant Rajesh daughter of Kewal Singh was dismissed by the trial Court vide judgment and decree dated 15.04.2011 and appeal preferred by unsuccessful plaintiff did not find favour with Additional District Judge, Jhajjar.

The appellant/plaintiff has claimed that her father Kewal Singh son of Jug Lal is owner in possession of 1/5th share of land measuring 216 kanal 13 marlas situated in the revenue estate of village Dawla, Tehsil and District Jhajjar. The property is ancestral and coparcenary property in which plaintiff had right by way of birth. Kewal, her father had no right to transfer and alienate share of the plaintiff. Defendant No.2 (Kewal) vide suit No.752 of 1997 consented to transfer his share in favour of Satish Kumar son of Phoola, nephew of Kewal. A decree was passed on 24.01.1998 by way of compromise. The decree has been obtained by way of fraud and misrepresentation and she has challenged the decree and mutation No.1934 dated 08.01.2000 based upon the decree being liable to be set aside.

The trial Court, having heard counsel for the plaintiff in the

light of materials on record has held that as property in the hands of Kewal was no more coparcenary but had acquired character of self property being transferred to him by way of registered Will, she has no locus standi to challenge the decree passed against her father who is still alive. The Court also negated plea of the plaintiff that decree is the result of fraud or misrepresentation and the suit was held to be not maintainable. The Court dismissed the suit ex parte with costs. As has been noticed hereinbefore, findings recorded by the trial Court were affirmed in appeal which was also disposed of ex parte as the respondents/defendants did not contest the proceedings throughout.

Counsel for the appellant would argue that as suit land was inherited by Kewal along with his four brothers by way of Will from Jug Lal, father of Kewal, the suit land was coparcenary property in the hands of Sh. Kewal in which the appellant acquired right by way of birth.

Another submission made by counsel is that the decree dated 24.01.1998 is the result of fraud and misrepresentation obtained with a clear intent to deprive the appellant of her right to succeed to the property in question.

Counsel representing the respondents, on the contrary, has supported consistent findings of the Courts that suit land is not coparcenary property in the hands of Sh. Kewal, therefore, the appellant had no right in suit land which has been disposed of by Sh. Kewal vide judgment and decree dated 24.01.1998. It is further urged that during lifetime of Kewal, appellant has no locus to challenge the judgment and decree dated 24.01.1998.

Be that as it may, it is undisputed position of the case that land owned by Jug Lal was succeeded by his five sons including Kewal to the extent of 1/5th share each on the basis of Testamentary Succession. Assuming that Jug Lal had only five sons and other class I heirs and all the sons succeeded to the property in equal share, admittedly, Kewal had no son when he inherited the suit land from his father Sh. Jug Lal, therefore,

he became absolute owner of suit land. The suit land was disposed of by Kewal by way of decree dated 24.01.1998 and till date, Kewal has not challenged said judgment and decree on any ground whatever much less the same being result of fraud or misrepresentation. As Kewal had already disposed of suit land prior to 20.12.2004, the appellant cannot derive any advantage from amendment of Section 6 of the Hindu Succession Act, 1956 whereby the daughter of a coparcener has been given birth right in coparcenary property equal to that of a son.

Proviso to Sub Section 1 of Section 6 of the Hindu Succession Act, 1956, germane to the controversy, reads as follows:-

“Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.”

In this view of the matter, contention of the appellant that she got a birth right in suit property by claiming to be ancestral coparcenary property is patently misconceived and liable to be rejected. As has been rightly argued by counsel for the respondents, since the appellant did not have any right in suit property at the time when Kewal suffered decree dated 24.01.1998, she has no locus to challenge the decree dated 24.01.1998 particularly during lifetime of Kewal, arrayed as defendant No.2 in the suit. Under the circumstances, this Court need not to dilate on the issue whether the suit property was coparcenary or otherwise in the hands of Sh. Kewal.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed with costs.

28.11.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No