

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

R.S.A No.1758 of 2016(O&M)

Date of decision :10.09.2018

Anil Kumar and others

..... Appellants

Versus

Ram Swaroop and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Varun Gupta, Advocate
for the applicant-appellants.

LISA GILL,J

CM-No. 11948-C of 2018.

Prayer in this application is for restoration of appeal which was dismissed in default on 24.07.2018.

For the reasons mentioned in the application as well as the arguments addressed, it is considered just and expedient to recall order dated 24.07.2018 whereby the appeal filed by the applicants-appellants was dismissed in default.

Appeal is restored to its original number.

With the consent of learned counsel for the appellants, the appeal is taken up for hearing today itself.

Application is disposed of.

RSA No. 1758 of 2016.

Appellant-plaintiffs are aggrieved of judgement and decree dated 06.12.2012, passed by learned Civil Judge (Sr. Division), Narnaul, as well as judgement and decree dated 09.07.2015, passed by the learned

Additional District Judge, Narnaul. Suit filed by the appellant-plaintiffs was dismissed.

Brief facts necessary for the adjudication of the case are that the appellant-plaintiffs, who are the sons of respondent-defendant no.2- Ram Swaroop son of Kurda Ram, filed a suit for declaration to the effect that they are owners of land as detailed in the plaint, the said property being ancestral, coparcenary, Hindu undivided family property and furthermore sale deed no. 2218 dated 03.09.2004 executed by their father-respondent no.2 in favour of respondent-defendant no.1, is illegal, null, void and not binding on their rights. It was pleaded that the plaintiffs and respondent no.2-Ram Swaroop were members of a Hindu undivided family. Property in question is ancestral property, which devolved upon the plaintiffs father from his forefathers. Therefore, respondent no.2 was not entitled to sell the suit property without legal necessity. Respondent no.2, it was pleaded was prone to bad habits and vices. Thus, sale deed no. 2218 dated 03.09.2004 was illegal, null void and ineffective qua the rights of the plaintiffs.

The suit was resisted by the respondent-defendant no.1. While taking various preliminary objections in the written statement, it was pleaded that respondent-defendant no.2, father of the plaintiffs was still alive. Therefore, his legal representatives had no right to challenge the sale deed dated 03.09.2004. It was denied that the property in question was Hindi Joint Family ancestral coparcenary property. Respondent no.1, it was contended was the absolute owner in possession of the suit property. Loan from a bank had been incurred by respondent

no.2. Some amount had also been borrowed by him from other persons. He was also in need of the money. Sale deed dated 03.09.2004 was voluntarily and legally executed for valuable consideration of ₹2.4 lakhs. Possession of the property in question was handed over to the said defendant. It was further pleaded that respondent no.22 after the sale built a house and installed new electric connection. The sale deed was valid. Dismissal of the suit was prayed.

Respondent-defendant no.1 filed a written statement admitting the claim of the plaintiffs.

Replication to the written statement filed by respondent no.1 was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the sale deed no.2218 dated 03.09.2004 is wrong, against law, facts and not binding on the rights of the plaintiffs as alleged in the plaint?OPP
2. Whether the suit is time barred?OPD
3. Whether the present suit is not maintainable in the present for,?OPD
4. Whether the plaintiffs have no locus standi to file the present suit?OPD
5. Whether the defendant is entitled to special costs under Section 35A of CPC?OPD
6. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court after considering the evidence on record, facts and circumstances of the case, concluded that the property in question was not the joint family ancestral property of the parties. It had devolved upon respondent no.2 on the basis of a registered will dated 28.06.1982 executed by his father Kurda Ram as reflected in mutation no.

1829 Ex.P-10. Respondent no.1 was concluded to be a *bona fide* purchaser of the suit property for valuable consideration. Suit was accordingly dismissed.

Appeal preferred by the appellant-plaintiffs was also dismissed by the learned Additional District Judge, Narnaul, vide impugned judgement and decree dated 09.07.2015.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellants contends that both the learned Courts below have erred in dismissing the suit filed by the appellants. There is sufficient evidence on record to show that the suit property is joint, ancestral, coparcenary property. Moreover, defendant-respondent no.1 failed to prove that father of the plaintiffs-Ram Swaroop is the absolute owner in possession of the property in question. It is vehemently argued that once the property in question is the ancestral, coparcenary property, the appellant's father had no right to dispose of the same without any legal necessity. Furthermore, respondent no.2, the appellant's father had admitted the stand of the appellants. It is thus prayed that the impugned judgements and decrees be set aside and the suit filed by the appellant-plaintiffs be decreed throughout.

I have heard learned counsel for the appellants and have gone through the file with his able assistance.

It is relevant to note at the outset that there is no denial that respondent no.2-Ram Swaroop became the owner of agricultural land including the suit property measuring 95 Kanal 13 Marlas on the basis of a registered will dated 28.06.1982 executed by his father Kurda Ram. The

same is clearly reflected in mutation no. 1829 Ex.P-10. The specific case of the plaintiffs is that the property in question is ancestral. Until and unless specific evidence is led by the parties claiming the property to be so, it cannot be held that the said property is ancestral. In the present case, there is indeed no evidence on record which is conclusively persuasive to hold that the property in question was the Joint Hindu ancestral coparcenary property of the plaintiff-appellants and respondent no.2. Moreover, learned trial Court has rightly observed that even if for the sake of arguments it is presumed that the property in question is coparcenary, ancestral property, it is proved on record that alienation of the property was for a legal necessity. A loan had admittedly been availed of by respondent no.2. As per Ex.D-1 i.e. jamabandi for the year 1994-95, there is a specific entry of a loan of ₹1 lakh from the Gurgaon Gramin Bank vide Repat no. 158 dated 17.11.2000 of Punjab National Bank. As per sale deed Ex.DW1/B, there is a specific recital that the vendor was in need of money. Said sale deed is duly proved on record. It is mentioned therein that a sum of ₹2.4 lakhs was handed over to respondent no.1 before the Sub-Registrar. DW-2-Babu Lal, the attesting witness specifically proved the execution of the sale deed as well as receipt of ₹4 lakhs by respondent no.2 from defendant no.1 in his presence.

A perusal of the testimony of PW-1-Anil Kumar (affidavit Ex.PW1/A) clearly displays that respondent no.2 was neither of unsound mind or a drug addict as projected by the plaintiffs. Respondent no.2 had afforded proper care, education and all amenities to his children. Learned trial Court has rightly observed that the act and conduct of the plaintiffs

and particularly of respondent no.2, their father in as much as admitting the averments in the suit filed by them leads to an inference that the suit was filed by the plaintiffs in collusion with respondent no.2 to defeat the rights of defendant no.1, who is proved to be a *bona fide* purchase of the suit property. Thus, both the learned Courts below have rightly dismissed the suit filed by the appellants.

Learned counsel for the appellant-plaintiffs is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 06.12.2012 and 09.07.2015 passed by the learned Civil Judge (Sr. Division) Narnaul and learned Additional District Judge, Narnaul, respectively, are upheld.

There is a delay of sixty five (65) days in filing of this appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

10.09.2018

s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No