

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

RSA No.1966 of 2016

Date of Decision : 16.05.2018

Ujjagar Singh

.....Appellant

Versus

Mohan Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Rahul Rampal, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant/plaintiff was dismissed by the trial Court, vide judgment and decree dated 14.01.2013. As even the appeal preferred against the said decree failed and was dismissed on 22.09.2015. The plaintiff is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a declaration that the ex parte judgment and decree dated 21.02.1986, rendered in Civil Suit No.210, titled as Mohan Singh Vs. Harnam Singh, and order dated 17.10.1994, passed in the execution of the said decree, pursuant whereto a sale deed dated 11.11.1994, was executed, were illegal, null and void and not binding upon the rights of the plaintiff. Further to injunct defendant No.1, from causing any interference in his possession over the land comprised in khasra Nos.1449, 1450, 1448 and 1447.

Briefly the case of the plaintiff has been that Sapha great grand-father of the plaintiff had acquired an estate, including the suit property, from his father Dhiraj. Post death of Sapha his property was inherited by Kahan Singh and upon the death of the latter the property devolved upon Harnam Singh, father of the plaintiff and defendant No.2. Thus, the property in the hands of Harnam Singh was joint Hindu coparcenary property. The plaintiff had even filed a suit for joint possession and permanent injunction i.e. Case No.90 dated 09.05.1981, against his father and brother, which was decreed by the trial Court on 23.12.1981, and he was declared to be the joint owner in possession of 1/3rd share in the entire property including the suit property. However, Mohan Singh-defendant No.1, who propounded an agreement to sell dated 15.09.1979, obtained an ex parte decree dated 21.02.1986, for specific performance of the said agreement against his father Harnam Singh. He filed an execution application, and pursuant to the order dated 17.10.1994, passed by the executing Court a sale deed qua the suit property was ordered to be executed in favour of Mohan Singh-decree holder. Resultantly, a sale deed was executed and registered in favour of defendant No.1 on 11.11.1994, and the property was accordingly mutated in his name. But, as the suit property was ancestral and coparcenary in nature, and the plaintiff had an interest therein, the same could not be alienated by Harnam Singh, particularly, for, no legal necessity was shown to have existed. Thus, the suit.

On a consideration of the matter in issue and the evidence on

record, both the Courts concurrently concluded that the plea of the plaintiff that prior to the decree dated 21.02.1986, granted in favour of defendant No.1, the suit property, vide judgment and decree dated 23.12.1981, was declared to be a joint Hindu family coparcenary and therefore, alienation of the suit land by Harnam Singh in favour of defendant No.1 was invalid, was held to be erroneous and rejected. For, apparently, the decree dated 23.12.1981, was collusive between the plaintiff, his father Harnam Singh and his brother (defendant No.2). Further, the said suit was filed and decided, during the pendency of the suit for specific performance of the agreement, by defendant No.1, and the plaintiff withhold the facts from the Court. The Supreme Court in **S.P.Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) by LRs and others 1995(1) The Punjab Law Reporter 293**, has held that a person who's claim was based on a falsehood, had no right to approach the Court, for, he could be summarily thrown out at any stage of the litigation. Although, even independent of the decree dated 23.12.1981, to prove that the suit property was ancestral in nature, Pawan Kumar Excerpt Kanugo (PW-4), was examined, who proved on record the documents Ex.P21 to Ex.P44. However the plaintiff was unable to draw any benefit from the excerpt produced by PW4, as the said witness conceded in his statement that he did not know *Urdu* language and he had got those documents translated from one Charan Dass. Further, he had not brought the original record in the Court for comparison either. Thus, it was concluded that his testimony was hardly of any value, for in terms of the decision of this Court in **Hawa Singh Vs. Daya Nand and others 2010(2)**

Civil Court Cases 720 (P&H), under the High Court Rules & Orders, Volume-I, Chapter-9, Rules (v) & (vi) to prove excerpts, Special Kanungo or Patwari Moharrir was required to bring the original record in Court for its examination as also for the purpose of comparison. The oral evidence led by the plaintiff as regards the nature of the property being ancestral was not conclusive. Significantly, pursuant to the statement of Nazar Singh (defendant No.2), brother of the plaintiff, recorded in the execution proceedings, the sale deed was executed and registered in the name of defendant No.1, in execution of the decree dated 21.02.1986 (Ex.P4). Thus, neither did he dispute the decree dated 21.02.1986, nor the land involved in the said suit.

On being pointedly asked, learned counsel for the appellant could not point out anything from the record to show if the conclusion arrived at by both the Courts was either contrary to the record or suffered from any material illegality. Thus, no question of law, much less any substantial question of law, arises for consideration in this appeal. The same being devoid of merit is accordingly, dismissed.

16.05.2018

*Manoj Bhutani***(ARUN PALLI)
JUDGE**Whether speaking/reasoned
Whether reportableYes/No
Yes/No