

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

**RSA No.3495 of 2016 (O&M)
Date of Decision.18.12.2018**

Harmesh Kumar Sharma

....Appellant

Vs

Jagan Nath (D) through LRs and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Arnav Sood, Advocate
for the appellant.

Mr. Harsh Aggarwal, Advocate
for the caveator-respondents.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in claiming declaration in respect of the suit property in laying challenge to the sale deeds dated 10.02.1993 executed by defendant No.1 in favour of defendant No.2 and sale deed of even date executed in favour of defendant No.3 and subsequent sale deed dated 22.02.2006 executed by defendants No.2 and 3 in favour of defendant No.4.

The suit aforementioned was based upon that the property at the hands of defendant No.1, Jagan Nath was ancestral. In fact for raising the construction, plaintiff had been sending money to defendant No.1 and reliance was laid to site plan Ex.P9 that the property shown in green colour and blue was ancestral, which was in the hands of defendant as *karta* and in the year 1967-1968, partition of whole property had taken place whereby defendant No.4, his brother, was given a specific portion and defendant No.1 Jagan Nath and plaintiff separate portions. In view of the nature of the property being ancestral, Jagan Nath could not have alienated the property

vide sale deeds dated 10.02.1993 and 22.02.2006 as it was without legal necessity.

The defendants opposed the suit. Defendants No.1 to 4 appeared and filed joint written statement and denied the partition as well as nature of the suit property to be coparcenary. It was stated to be self-acquired property of Jagan Nath, who had sold the entire share vide sale deed dated 10.02.1993. Objection qua suit being barred by limitation was also taken.

The trial Court on the basis of the aforementioned pleadings framed the following issues:-

“1. Whether the plaintiff is entitled to declaration as prayed for? OPP

2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

3. Whether plaintiff has got no locus standi to file the present suit? OPD

4. Whether suit filed by the plaintiff is within limitation? OPP

5. Whether the suit is bad for non joinder and mis joinder of necessary parties? OPD

6. Whether the present suit is maintainable in the present form? OPD

7. Whether the plaintiff has got no cause of action to file the present suit? OPD

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

9. Whether defendant No.4 is bona fide purchaser for valuable consideration? OPD

10. Relief.?

The plaintiff in support of the aforementioned pleadings examined himself as PW1, Ram Murti Chouhan, Draftsman as PW2, Satpal cashier as PW3, Mangesh Pal, Clerk as PW4, Kranti K. Sharma, handwriting and finger print expert as PW5 whereas the defendants examined Sukhraj Singh as DW1, Varinder Kumar, deed writer as DW-2, Davinder Kumar, clerk as DW3, Joga Singh, Jr. Assistant as DW4, Krishan Lal, deed writer as DW5, Arvind Sood, handwriting and finger print expert as DW6 and Nand Kishore as DW7.

Plaintiff also tendered documents Ex.P1 to P35 letters and bank certificates to establish that he was actual owner of the property whereas defendant No.1 was the name lender.

Mr. Arun Jain, learned senior counsel assisted by Mr. Arnav Sood, learned counsel appearing for the appellant submitted that Ram Murti, Draftsman who prepared the site plan Ex.P9, acknowledged the factum of partition amongst the parties, which was signed by Jagan Nath and signatures have not been controverted. Oral partition in the absence of reflection in the revenue record is permissible in law. Parties through their conduct and implication conferred the ownership and as mark of respect to the common ancestor, retained his name. In such circumstances, Jagan Nath had no right and title in selling entire suit property vide sale deed dated 10.02.1993. Madan Mohan Sharma, defendant No.4 is none else but

brother of the plaintiff and son of defendant No.1 Jagan Nath. It was a ploy to oust ownership of the plaintiff by first selling the same to defendants No.2 and 3 and then reverted back to Madan Mohan Sharma, therefore, there is illegality and perversity.

Even account statements and letters also reflect contribution of plaintiff towards erection and purchase of the plot.

I am afraid aforementioned arguments are not sustainable, as the revenue record reflected the ownership of Jagan Nath. Jagan Nath denied the partition as the suit was filed during his life time. Plaintiff has miserably failed to prove nature of the property to be ancestral. It is settled law that suit against father during his life by laying challenge to the sale deed is not maintainable. On the contrary, defendant proved execution of the sale deed dated 10.02.1993 and subsequent dated 22.02.2006. Plaintiff in the cross-examination admitted to have received some consideration out of sale proceeds in respect of sale deed dated 10.02.1993. All these factors lead to irresistible conclusion that plaintiff miserably failed to prove the case as set out in the plaint.

In this view of the matter, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 18, 2018

Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No