

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

**R.S.A No.3796 of 2016(O&M)
Date of decision :18.07.2018**

Munshi Ram

..... Appellant

Versus

Ram Phal and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. D.D.Sharma, Advocate
for the appellant.

LISA GILL,J

The present appeal has been filed against the judgment and decree dated 15.03.2011 passed by the learned Addl. Civil Judge (Sr. Division), Hansi, whereby the plaintiff-appellant's suit has been dismissed as well as judgment and decree dated 12.01.2016 passed by the learned Additional District Judge, Hisar, whereby his appeal has also been dismissed.

Brief facts necessary for the adjudication of the case are that the appellant filed a suit for declaration to the effect that he is the owner in possession of total land measuring 20 Kanal 2 Marlas as detailed in his plaint as well as setting aside mutation bearing No. 1623 dated 20.12.1996. Appellant-plaintiff further prayed that mortgage deed registered on 13.12.1996 and mutation no. 163 dated 20.12.1996 which

has been sanctioned on the basis of the said mortgage deed be set aside and further for setting aside the impugned release deed No. 2019 dated 12.01.2007, which had been executed by defendant no.1 in favour of defendants no.2 to 6 with regard to the total land measuring 92 Kanal 2 Marlas. Appellant-plaintiff further prayed for restraining the defendants from alienating the suit property in any manner till adjudication of the suit.. Hira son of Kanshi Ram son of Daya Ram was the owner in possession of the land measuring 123 Kanal 11 Marlas as per jamabandi for the year 1972-73. After death of Hira, appellant-plaintiff's father Chandan inherited the entire land measuring 123 Kanal 11 Marlas as reflected in the mutation of inheritance dated 29.02.1978. It was pleaded that the property in question was the ancestral property of the parties to the suit and further land measuring 92 Kanal 1 Marla was transferred by Chandan son of Hira in favour of his children by way of decree dated 28.11.1996 passed in Civil Suit No. 993-C of 1996, on the basis of a family settlement arrived at on the day of 'Diwali' in the year 1995.

Appellant-plaintiff set up a case that no such family settlement had taken place and his father had suffered the said decree in collusion with defendants no.1 and 2 only with a view to defeat the appellant's rights in the suit land. After passing of the Civil Court decree, defendant-respondent no.1 mortgaged his land measuring 92 Kanal 2 Marlas with defendant no.2. Mutation No. 163 was sanctioned on 20.12.1996. The said civil suit decree, it was pleaded was passed without the knowledge of the appellant. The same could not have been passed as the suit property was ancestral. Validity of the said Civil Court decree

was challenged by the appellant-plaintiff by preferring Civil Suit No. 229 of 1999. Appellant's father at that time was still owner in possession of land measuring 31 Kanal 9 Marlas as per Jamabandi for the year 1997-98. Appellant-plaintiff's father Chandan executed a release deed of land measuring 16 Kanal in favour of his son-Laxmi Narayan-respondent no.3 by way of release deed No. 1174 dated 06.03.2000. During the pendency of the civil suit the matter it was pleaded was compromised and a family settlement arrived that judgment and decree dated 28.11.1996 and Mutation No. 162 and 163, Mortgage deed dated 13.12.1996 will be got cancelled and land measuring 123 Kanal 11 Marlas will be divided in equal shares amongst all the brothers i.e. sons of Chandan including Laxmi Narayan. It was further pleaded that the plaintiff's brother namely Dharampal was missing since 8-9 years and is thus presumed to be dead. Appellant's father had executed release deed of land measuring 15 Kanal 9 Marlas in his favour. Mutation in this regard was also sanctioned. It was averred that the appellant requested defendant no.1 to divide the land in equal shares so that additional land measuring 4 Kanal 11 Marlas is handed over to him. Appellant also requested to get the Civil Court decree of 1996 and consequent mutation cancelled, but to no avail. Suit was accordingly filed.

Suit was resisted by the defendants by taking various pleas including that of maintainability, concealment of facts etc. It was submitted that the matter had been compromised when the appellant had filed the civil suit. The appellant had been given 15 Kanal 9 Marlas of land alongwith plot, residential house, cash, ornaments etc., and his claim

was fully satisfied. The civil suit was withdrawn by the appellant due to this reason. It was thus prayed that the suit be dismissed. No replication was filed.

From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the suit property is ancestral property of the parties to the suit, if so, its effect?OPP
2. Whether the civil court judgment and decree passed in case titled 'Ramphal Vs. Chandan' on 20.12.1996 and mutation no. 162 dated 20.12.1996 is illegal, null and void and is liable to be set aside on the grounds as mentioned in the plaint?OPP.
3. Whether the release deed dated 12.01.2007 is liable to be set aside on the grounds mentioned in para no.9 of the plaint, if so, its effect?OPP
4. Whether mutation no. 163 dated 20.12.1996 is illegal, null and void and is liable to be set aside?OPP
5. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPP
6. Whether the suit is not maintainable?OPD
7. Whether the plaintiff has not come to the Court with clean hands and suppressed the material facts, if so its effect?OPD
8. Whether the suit is bad for mis joinder or non joinder of necessary parties?OPD
9. Whether the suit of the plaintiff is liable to be dismissed under Order 2 Rule 2 CPC?OPD
10. Whether the plaintiff has not affixed the property Court fee?OPD
11. Whether suit is barred by law of limitation?OPD
12. Whether defendants are entitled for special costs under Section 35 A of CPC ?OPD.
13. Relief.

Evidence was led by both the parties.

The learned trial Court dismissed the suit filed by the appellant-plaintiff while holding that the appellant had assailed civil Court decree dated 28.11.1996 by filing civil suit No. 229 of 1999 which was withdrawn on the basis of a compromise arrived at between the parties. It is observed by the learned trial Court that there is no such

recital regarding a compromise for having the said decree dated 28.11.1996 set aside. Moreover, release deed of the land measuring 15 Kanal 9 Marlas was executed by the appellant's father Chandan on 26.03.2002 i.e. during the pendency of the said civil suit. The said property had been accepted by the appellant without any protest. There is nothing on record to show that there was any compromise regarding the appellant receiving land in addition to 15 Kanal 9 Marlas. Moreover, once the appellant, it was held was enjoying the fruits of the land measuring 15 Kanal 9 Marlas, he could not assail the legality of the compromise of which he himself is a beneficiary. It is further observed that respondent no.3-Laxmi Narayan had also been given land measuring 16 Kanals while executing the release deed Ex.D-5, therefore, it cannot be said that the appellant-plaintiff alone had been given less share in the property.

Appeal was preferred by the appellant impugning judgment and decree dated 15.03.2014. However, learned Additional District Judge, Hisar, on considering all the pleas raised by learned counsel for the appellant, dismissed his appeal vide judgment and decree dated 12.01.2016.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned Courts below have misread the evidence on record. Civil suit No. 229 of 1999 was withdrawn on a clear understanding between the parties that the entire suit property i.e. 123 Kanal 11Marlas shall be divided in equal shares. However, the division was not equal in any

manner. The appellant got lesser land i.e. 4 Kanal 11 Marlas less than his entitlement. Acceptance of 15 Kanal 9 Marlas vide release deed dated 26.03.2002 does not estop the appellant from taking the plea of the suit land being ancestral and neither does it prevent him from seeking the complete share of property to which he is entitled. It is thus prayed that this appeal be allowed and the impugned judgments and decrees passed by the learned Courts below be set aside and the suit of the appellant-plaintiff be decreed in his favour throughout.

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

Grievance of the appellant is that he has received a lesser share of the land than what he was entitled to. The entire land holding of 123 Kanal, 11 Marlas was not divided equally between him and his five brothers (another unmarried brother stated to be missing, thus allegedly presumed dead). There is no dispute that the property in question belonged to one Hira. Appellant's father-Chandan became owner in possession of the said property after the death of Hira. There is further no dispute that the appellant had earlier filed a civil suit challenging Civil Court decree dated 28.11.1996. The said civil suit was dismissed as withdrawn on 07.04.2003 (Ex.D-1), wherein the appellant suffered a statement (Ex.D-2) to the effect that the matter has been amicably resolved between the parties and the land in question would be divided proportionately in accordance with the settlement between parties. There is no recital to the effect that decree dated 28.11.1996 would be got set aside/cancelled. There is further no dispute that the appellant is enjoying

the possession of land measuring 15 Kanal 9 Marlas pursuant to a release deed dated 26.03.2002 executed by his father-Chandan during the pendency of the said suit.

Appellant-plaintiff while appearing as PW-1 admitted in his cross-examination that besides the land in question, he has also been given a plot, a residential house as well as some ornaments, though it is sought to be projected that the ornaments given to him were duplicate/not genuine. Learned trial Court has rightly observed that the appellant's father-Chandan executed two release deeds i.e., one in favour of the plaintiff and another in favour of his son-Laxmi Narayan, because all his remaining sons had already been given a due share in the property in the year 1996. In this manner, claim of each member of the family was justifiably settled from the property owned by Chandan. Laxmi Narayan had been given 16 Kanals of land. Once, the matter was compromised between the parties, both the learned Courts below have rightly placed reliance upon the judgments of this Court in **Krishna Biharilal Vs. Gulabchand and others 1971 Current Law Journal 652** and **Shishpal Vs. Vikram 1999 (1) Civil Court Cases 605**, while dismissing the suit of the appellant-plaintiff.

No other argument has been raised.

Learned counsel for the appellant-plaintiff 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 judgments are well reasoned judgments rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 15.03.2011 and 12.01.2016 passed by the learned Addl. Civil Judge (Sr. Division) Hansi and learned Additional District Judge, Hisar, respectively, which warrant any interference by this Court.

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

18.07.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No