

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

**RSA No.3902 of 2016 (O&M)
Date of decision: 08.03.2018**

Mohinder Singh

.....Appellant

Versus

Dhana Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.C. Arora, Advocate,
for the appellant.

Ritu Bahri, J.

This appeal has been directed against the judgment dated 18.05.2016 passed by the Additional District Judge, Sri Muktsar Sahib, whereby appeal filed by plaintiff (appellant herein) against the judgment & decree dated 13.01.2014 passed by the Additional Civil Judge (Senior Division), Sri Muktsar Sahib, has been dismissed.

Mohinder Singh-plaintiff (appellant herein) filed a suit for declaration alleging that Phuman Singh had two sons namely Dhanna Singh and Natha Singh. Phuman Singh was owner of land measuring 144 Kanals 14 Marlas situated in the revenue estate of village Jhabel Wali and a residential house measuring 844 square yards at Bathinda. After death, he was succeeded by Natha Singh and Dhanna Singh (defendant No.1). Mohinder Singh-plaintiff was son of Dhanna Singh. As per plaintiff, Phuman Singh constituted a Joint Hindu Family with Dhanna Singh and Natha Singh and suit property was coparcenary and ancestral property of joint Hindu family in the hands of Phuman Singh. Mohinder Singh-plaintiff being the son of Dhanna Singh had right in the suit property since his birth.

After the death of Natha Singh, heirs of Natha Singh and Dhanna Singh became co-owners to the extent of half share. Dhanna Singh suffered a civil court decree dated 29.08.1998 in favour of heirs of Natha Singh with regard to land measuring 100 Kanals 03 Marlas, as detailed in head note 'A' of the plaint and heirs of Natha Singh suffered decree in favour of Dhanna Singh on 29.05.2000, whereby Dhanna Singh got 44 Kanals 11 Marlas of land and one residential house, as detailed in head note 'B' of the plaint. The entire suit property was partitioned between the heirs of Natha Singh and Dhanna Singh vide these two civil court decrees. Both these decrees were illegal, null and void. No family settlement as alleged in the decrees was ever effected. The family settlement could be made only by involving all the members of family in order to settle the dispute. Both judgments and decrees were made final subject to registration. As such, the said decrees did not affect the rights of the plaintiff in the suit land, as the same remained unregistered and could not be acted upon. On the basis of revenue record (which was prepared on the basis of aforesaid judgments and decrees), Dhanna Singh-defendant No.1 executed sale deed qua land measuring 19 Kanals 18 Marlas in favour of defendant No.14. Ajmer Singh got executed sale deed dated 08.01.2003 of land measuring 13 Kanals in favour of defendant Nos.15 and 16. Dhanna Singh executed sale deed dated 21.12.2005 of 14 Kanals in favour of Amardeep Singh-defendant No.14. As per plaintiff, these sale deed were also illegal, null & void and would not confer any right upon purchasers as sellers were not having valid title. Plaintiff came to know about the decrees and sale deeds on 12.09.2008. Hence, the suit.

Upon notice, defendant-respondent Nos. 1 and 11 filed joint

written statement taking preliminary objections with regard to estoppel, suit being barred by limitation, cause of action, locus standi, suit being barred under Order 2 Rule 2 CPC etc. It was denied that Phuman Singh had constituted joint Hindu family with Dhanna Singh and Natha Singh and suit property was ancestral and coparcenary property of joint Hindu family. It was stated that family settlement was validly entered and no fraud has been played. Decrees passed by the Courts were legal and binding upon the parties.

Defendant Nos. 2 to 9 filed separate written statement taking similar pleas as were taken by defendant Nos. 1 and 11. Defendant No.10 filed separate written statement, whereby he had also denied the fact that suit property was ancestral and coparcenary property of joint Hindu family or Phuman Singh having any joint Hindu family with Dhanna Singh and Natha Singh. It was alleged that Dhanna Singh had transferred his ownership regarding 14 Kanals of land to defendant No.10 and to compensate his share, transfer deed dated 21.12.2005 had been executed by Dhanna Singh with his free consent. It was further stated that decrees and sale deeds were perfectly legal and valid and the plaintiff was residing separately for the last 44 years from defendant No.1. Plaintiff was given 153 yards of land in lieu of love and affection at Bathinda. The house at Bathinda had been purchased by Dhanna Singh with his own personal income. All other allegations levelled by the plaintiff in the plaint were denied and prayer for dismissal of the suit was made.

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

1. Whether the plaintiff is entitled for grant of declaration as being prayed for? OPP

2. Whether the plaintiff is entitled for grant of permanent injunction as being prayed for? OPP
3. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD
4. Whether the suit of the plaintiff is within limitation? OPD
5. Whether the plaintiff has got no cause of action or locus standi to file the present suit? OPD
6. Whether the suit of the plaintiff is barred under Order 2 Rule 2 CPC? OPD
7. Whether the suit is liable to be dismissed due to res-judicata? OPD
8. Whether the plaintiff has not come to the Court with clean hands and has concealed the material facts from the Court, if so, its effect? OPD
9. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment and decree also met the same fate.

Heard, counsel for the appellant.

Dhanna Singh-defendant No.1 being father of plaintiff, had represented him in the partition proceedings, whereby legal heirs of Natha Singh and Dhanna Singh had got partitioned the suit properties vide impugned decrees dated 29.08.1998 and 29.05.2000. Once Dhanna Singh being head of the family had participated in the partition proceedings, plaintiff who was son of Dhanna Singh, was not necessary party in those proceedings. He would have been a necessary party in a coparcenary constituted between Dhanna Singh and his sons and son's son. In the present case, partition was effected between two branches, one represented by Dhanna Singh and other by Natha Singh. Plaintiff being son of Dhanna Singh was not necessary party in the family settlement. Moreover, during

his cross-examination, plaintiff Mohinder Singh (PW-1) had admitted that house purchased at Bathinda was the self acquired property of Dhanna Singh-defendant No.1 and Natha Singh. He further stated that Dhanna Singh was absolute owner of the house situated at Bathinda since 1998. He also admitted that Dhanna Singh resided with him till the date of his death. Once, the plaintiff had admitted that the aforesaid house was self acquired property of his father, he could not plead that the suit property was ancestral coparcenary property and the partition proceedings finalized during the life time of Dhanna Singh were illegal and null & void.

Another point, which has been considered by both the Courts below was that the decrees dated 29.08.1998 and 29.05.2000 did not require compulsory registration as after the said decrees, the shares were separated between the heirs of Natha Singh and Dhanna Singh and they proceeded to take possession of their respective shares of the land. Hence, the sale deeds could not be said to be illegal, null and void. Dhanna Singh being father of plaintiff was *karta* of the joint Hindu family. He had a right to alienate the ancestral and coparcenary property (after partition thereof) for legal necessity and benefit of the estate. Moreover, the partition proceedings, which were effected on the basis of compromise between the parties, cannot be challenged on the ground of unequal distribution. Once, the partition had taken place voluntarily between the parties, they cannot raise a grievance that it was unequal distribution of assets, as held by this Court in **Murti vs. Jai Ram and others**, 2012 (5) RCR (Civil) 574 and **Vijay Kumar and others vs. Sham Sunder and others**, 2012 (4) CCC 425.

After going through the impugned judgments, this Court is of the view that the impugned decrees dated 29.08.1998 & 29.05.2000 Ex.P9 and

Ex.P11 have been rightly held to be legal and valid decrees. The family settlement has been duly proved on record by the defendants. Thereafter, Dhanna Singh being *karta* of joint Hindu family could alienate the property for legal necessity and benefit of the estate and the coparcener can only challenge the said alienation on the ground that it was not for legal necessity or benefit of the state. However, the plaintiff had not challenged the sale deed on the above said grounds. Hence, the sale deed executed by Dhanna Singh were legal and valid. In these circumstances, suit of plaintiff-appellant has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

08.03.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No