

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

RSA No.3925 of 2016 (O&M)

Date of Decision: August 23, 2018

Vikash and others

...Appellants

Versus

Raj Kumar and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.V.B.Aggarwal, Advocate for
the appellants.

HARINDER SINGH SIDHU, J.

The plaintiffs have filed this regular second appeal impugning the judgment of the courts below, whereby their suit has been dismissed.

Plaintiff No.1 is the son of defendant No.2. Plaintiffs No.2 and 3 (who were minors at the time of institution of the suit) are also the sons of defendant No.2.

The plaintiffs filed a suit for declaration to the effect that sale deed No.2410 dated 7.10.2005 executed by defendant No.2 in favour of defendant No.1 and mutation No.3038 based thereon sanctioned in his favour and the further sale-deed No.3723 dated 28.3.2007 executed by defendant No.1 in favour of defendant No.3 were illegal and null and void. It was their case that the plaintiffs and defendant No.2 constituted Joint Hindu Family. The suit land was ancestral property in the hands of defendant No.2 in which the plaintiffs had right by birth. Defendant No.2

Wrongly and illegally executed sale deed No.2410 dated 7.10.2005 in favour

of defendant No.1 without any legal right, legal necessity or benefit of estate. Thereafter, defendant No.1 sold the suit land to defendant No.3 vide sale deed No.3723 dated 28.3.2007.

The defendants denied that the suit land was ancestral property or that the plaintiffs had right in it by birth. It was pleaded that defendant No.2 was absolute owner of the suit land. The plaintiffs had no right to challenge the sale-deed. It was denied that the execution of sale-deed was an act of mis-management.

The learned trial court on the basis of evidence concluded that the plaintiffs had not been able to substantiate their claim that the suit land was ancestral property. They had not been able to prove that the suit land was inherited by their father from their grand-father and great grand-father. Hence, the property had to be treated as self acquired property of defendant No.2 and not ancestral. Further, there was no evidence on record that the suit land was sold for immoral purposes or was not an act of good management. The learned trial court also concluded that the suit has been filed by the plaintiffs in collusion with defendant No.2 as he had not chosen to contest the suit. Reliance was placed on the judgment of this Court in **Siri Kishan and others vs. Sanwal and others, 2004(2) RCR(Civil) 731**, wherein, it was held that in a case where a sale-deed is challenged by co-parceners and the vendor does not contest the suit, it leads to a clear inference of collusion between the vendor and his family members. In view thereof, the suit was dismissed.

The learned first Appellate Court affirmed the findings of the Trial

Findings of fact have been recorded by the courts below. It has not been shown as to how those findings are perverse or against the evidence on record. No substantial question of law arises for decision in this case.

Accordingly, there is no merit in the appeal and the same is hereby dismissed.

August 23, 2018

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No