

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3648 of 2015 (O&M)

Date of Decision : 28.02.2018

Kuldeep Singh Dhawan

....appellant

Versus

Jasbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Seema Pasricha, Advocate
for the appellant.

Surinder Gupta, J.

Plaintiff-appellant claimed to be joint owner of H. No. 1526, Sector 36-D, Chandigarh on the ground that his father Sarwan Singh had purchased this house in the name of his brother Jasbir Singh and mother Avtar Kaur with the income derived from joint Hindu family ancestral property in the name of plaintiff and defendant-respondent no. 2-Baljinder Singh. He also challenged sale deed no. 2358 dated 01.09.2003 executed by Avtar Kaur mother of plaintiff-appellant in favour of Jasbir Singh, brother of appellant, dubbing the same as forged and fictitious document. As a consequential relief, he has sought partition of his separate share and delivery of actual possession of his share in the suit property. He also alleged that one room of the house was in his exclusive possession and defendants be restrained from dispossessing him and from selling, alienating or transferring the title of suit property. His plea that suit property was purchased by the income of joint Hindu family coparcenary property, was discarded by both the Courts below with the observation that plaintiff-appellant has not been able to produce any evidence to show that any joint Hindu family property was sold and with the income of joint Hindu family property, the suit property was purchased. Even if above contention of learned counsel for appellant (though not remotely proved) be accepted, still he cannot claim himself to be joint owner of the suit property during life time of his father, who is still alive, as any property purchased

from the funds of joint Hindu family property will also assume the same status and will vest with *karta* during his life time. In this case admittedly father of appellant had partitioned his land amongst his sons and there was no joint Hindu family property in existence at the time of purchase of the suit property.

Learned counsel for the appellant has argued that before the purchase of suit property father of plaintiff-appellant in his capacity as attorney of plaintiff, defendants no.1 and 2 and his wife Avtar Kaur had sold 10 acres of land out of which 4 acres each was from the ownership of Jasbir Singh and Baljinder Singh and 1 acre each was from the ownership of plaintiff-appellant and his mother. After selling 10 acres of land, sale consideration of ₹10 lakh was deposited in the account of Sarwan Singh, father of appellant, out of which he paid earnest money at the time of agreement of purchase of disputed property and paid another sum of ₹4 lakh to defendant no. 1. Amount of ₹5,33,334/- out of the aforesaid amount of ₹10 lakh was paid by father of appellant while defendant no. 1 paid sum of ₹3,16,666/- through draft to the vendor of the suit property. This shows that suit property was purchased from the common funds, as such, is joint Hindu family property.

On giving a careful thought to above submission of learned counsel for the appellant, I find no merit therein so as to agree with her. It is a case where father of appellant was not acting as *karta* while selling 1 acre of land of plaintiff-appellant. He was acting as his attorney. The question as to whether sale price of that 1 acre of land has been paid or not paid is a matter between the appellant and his attorney.

Learned counsel for the appellant has argued that disputed property was purchased in the name of his brother Jasbir Singh and mother Avtar Kaur in the share of 33/67% respectively. So far as share of Jasbir Singh in the suit property is concerned he had paid for it, admittedly, from

his own account. For the share of property purchased in the name of Avtar Kaur, money was paid by her husband Sarwan Singh (father of appellant). Avtar Kaur was exclusive owner of 67% share in the disputed house, which she has transferred in the name of Jasbir Singh vide sale deed no. 2358 dated 01.09.2003. Courts below have looked into this aspect to reach conclusion that sale by Avtar Kaur was for a valid consideration. Even otherwise, it is a matter between Avtar Kaur and Jasbir Singh and plaintiff has no right to allege the sale as illegal and sale deed executed by Avtar Kaur as forged and fictitious document. In no manner the appellant has become joint owner of the suit property and Courts below have committed no error of law while dismissing suit. No substantial question of law requiring determination arises in this revision, which has no merit.

Dismissed.

February 28, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No