

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1135 of 2017 (O&M)
Date of decision: 07.08.2018.

Munish Kumar and others

...Appellants

Versus

Som Pal and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.N. Lohan, Advocate and
Mr. Rishab Lohan, Advocate for the appellant.

LISA GILL, J.

The appellants/plaintiffs are aggrieved of the judgments and decrees dated 10.10.2016 and 21.11.2013 passed by the learned Additional District Judge, Jind and Additional Civil Judge (Sr. Division), Safidon respectively.

Brief facts necessary for adjudication of the case are that, suit for declaration was filed by the appellants/plaintiffs to the effect that they along with defendant No.1 Sompal son of Babra were joint owners in possession in equal shares as coparceners of Joint Hindu Family ancestral property i.e. agricultural land measuring 308 kanals 5 marlas to the extent of 1/5th share and that the alleged sale deed dated 07.07.2010 executed by their father Sompal defendant No.1 in favour of respondents No.2 and 3 of 8 kanals was illegal, null, void and not binding upon the rights of the appellants. It was

further prayed that respondents No.2 and 3 be restrained from alienating the suit property.

The appellants are the minor sons of Sompal respondent No.1. The suit was filed on their behalf through their mother, wife of Sompal respondent No.1. It was pleaded that Hira Singh son of Sahjada, great grandfather of appellants/plaintiffs and grandfather of respondent No.1 was the owner in possession of the suit land measuring 61 kanals 13 marlas. The property devolved upon Babra grandfather of the appellants. Thereafter, Babra transferred the suit land to respondent No.1 Sompal through a family settlement. Judgment and decree dated 24.03.1995 passed by learned Senior Sub Judge, Safidon and mutation No.4164 in favour of defendant No.1 Sompal was incorporated in the revenue record. It was, thus, pleaded that the plaintiffs and respondent No.1 were coparceners in the property which was ancestral Joint Hindu Family Property. It was further pleaded that the plaintiffs came to know that defendants/respondents No.2 and 3 by playing a fraud and through misrepresentation manipulated the execution of sale deed dated 07.07.2010. The appellants pleaded that their father Sompal respondent No.1 had no right to transfer the suit land without any legal necessity or for the benefit to the joint estate. Possession of the suit land was still with the plaintiffs and their father Sompal respondent No.1. Accordingly, the present suit for declaration as well as permanent injunction was filed.

Sompal, defendant/respondent No.1 appeared and admitted the claim of the appellants in the written statement. It was stated that he never executed the said sale deed dated 07.07.2010 in favour of respondents No.2 and 3 out of his own free will. The said respondents had made him consume liquor forcibly and thereafter took him to an office where they might have got

the sale deed executed and registered. No sale consideration, it was pleaded, was paid by respondents No.2 and 3. Respondent No.1 further took the plea that he did not execute the sale deed voluntarily, neither was it for any legal necessity or for the benefit of Joint Hindu Family property.

Defendants/respondents No.2 and 3 resisted the suit while taking a number of preliminary objections. They denied the claim of the appellants on merits. It was pleaded that the appellants' father, respondent No.1 was under a debt and in order to pay of the debts, he entered in an agreement to sell with Ram Rattan and Narain Dutt i.e. respective husbands of respondents No.2 and 3. Agreement to sell dated 10.09.2008 was registered. A sum of Rs.5,00,000/- out of the total sale consideration of Rs.7,00,000/- was paid to respondent No.1. It was agreed that the sale deed would be executed in favour of the person/persons as desired by Ram Rattan and Narain Dutt. Date of execution of the sale deed was fixed as 15.09.2009 and thereafter extended to 15.06.2010 by mutual consent of the parties. Separate writing in this regard was also endorsed on the reverse side of the agreement to sell dated 10.09.2008. As 15.06.2010 was a holiday, defendants/ respondents No.2 and 3 remained present before the office of Sub Registrar on 16.06.2010 but respondent No.1 did not turn up. Thereafter, husbands of respondents No.2 and 3 approached respondent No.1, who demanded a sum of Rs.2,04,620/- in addition to the agreed sale consideration. Consequently, a sum of Rs.4,04,620/- was paid by Sompal while depositing the same in the loan account of Sompal in Jind District Primary Cooperative Agricultural and Rural Development Bank Ltd., Safidon. Thus a total sum of Rs.09,04,620/- was paid to respondent No.1. Thereafter, sale deed dated 07.07.2010 was executed by Sompal in favour of

respondents No.2 and 3. It is specifically pleaded that suit property was the self acquired property of Sompal. He was well within his right to transfer the same. It is further stated that even if it is presumed to be an ancestral property, the sale consideration has been used by Sompal to pay off his debts. The said respondents pleaded that the suit was filed by the plaintiffs in collusion with their father Sompal respondent No.1 with a malafide intention to cause loss to them.

Replication to the written statement was filed and on the basis of the pleadings, following issues were framed: -

- “1. Whether the plaintiffs are entitled for declaration as well as injunction, as alleged” OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
3. Whether the plaintiffs have got no cause of action and locus standi to file the present suit? OPD
4. Whether the plaintiffs have not come in the court with clean hands? OPD
5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
6. Whether the plaintiffs are estopped from filing the present suit by his own act and conduct? OPD
7. Relief.”

Evidence was led by both the parties. Learned trial Court concluded that the plaintiffs failed to prove the ancestral nature of the suit property. Issue No.1 was decided against the plaintiffs and in favour of defendants No.2 and 3. Issues No. 2, 3, 4 and 6 were decided in favour of defendants No.2 and 3. No evidence was led by defendants No.2 and 3 on issue No.5 which was accordingly decided. Consequently, the suit filed by the

appellants/plaintiffs was dismissed on 21.11.2013. Appeal filed by the appellants/plaintiffs was also dismissed by the Additional District Judge, Jind.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants argues that both the learned courts below have grossly erred in returning the findings against the appellants/plaintiffs. Suit property in question was duly proved to be ancestral in nature on the basis of mutation Ex.P1/A as well as the pedigree table Ex.P1/B. Merely because the property was transferred in favour of defendant No.1/Sompal by way of judgment and decree dated 24.03.1995 suffered by his father Babra and the release deed in favour of defendant No.1/Sompal on 27.10.2003 by Angoori wife of Babra and mother of Sompal, it does not change the nature of the suit property. Moreover, sale deed dated 07.07.2010 in favour of respondents No.2 and 3 Ex.P1 is the result of fraud and misrepresentation as defendant No.1 Sompal used to remain under the influence of liquor. It is thus prayed that this appeal be allowed and the impugned judgments and decrees be set aside consequently decreeing the suit filed by the appellants throughout.

I have heard learned counsel for the appellants and have perused the file.

It is not in dispute that the appellants relied upon mutation No.4164, Ex.P1/A and the pedigree-table Ex.P1/B, to establish the nature of the suit property to be ancestral or coparcenary. No other evidence in this respect has been led. It is further not in dispute that Babra father of Sompal transferred the suit property in favour of his son Sompal through a family settlement. Judgment and decree dated 24.03.1995 was passed in the civil suit No.167 filed on 16.03.1995. Mutation No.4164 was sanctioned in this

regard. As per mutation No.4164, Babra transferred his land comprised in various khewats in favour of his son Sompal and his wife Angoori. As per mutation No.4656 Ex.D6, Angoori wife of Babra further transferred the said land in favour of Sompal by way of release deed No.1623 dated 27.10.2003. In this view of the matter, both the learned courts below have rightly held that the property in the hands of respondent No.1 Sompal was not ancestral Joint Hindu Family Coparcenary property.

It has been vehemently urged that the sale deed Ex.P1/D1 is the result of fraud and misrepresentation. This argument is totally unsubstantiated and is rejected being untenable. There is nothing on record to show that Sompal ever challenged the said sale deed. In the present proceedings, he filed a written statement admitting the pleas taken by the appellants while stating that the sale deed dated 07.07.2010 was the result of fraud and misrepresentation. At this stage, it is relevant to note that agreement to sell dated 10.09.2008 Ex.DW6/B was undoubtedly executed by Sompal in favour of Ram Rattan and Narain Dutt, husbands of respondents No.2 and 3. Earnest money of Rs.5,00,000/- was duly received by him. Date of execution of the sale deed was extended by way of endorsement Ex.DX. Respondent No.1 Sompal testifying as DW7 in his cross examination has admitted his signature upon the agreement to sell Ex.DW6/B as well as Ex.D1. Testimony of DW7 Sompal respondent No.1, in fact reveals the factual matrix of the case. It discloses that the suit filed by the appellants is entirely without any merit. DW7 Sompal admitted that the said agreement to sell, as well as the sale deed was scribed by Nihal Chand, Document Writer. Subhash and Mahender stood witnesses to the sale deed Ex.D1. The factum of extension of date of execution of sale deed vide endorsement Ex.DX is

also admitted by him. Sompal further stated that he repaid the loan of Rs.4,04,000/- taken from the bank at Safidon. He specifically stated that he mortgaged his property with the bank vide mortgage deed Ex.DW2/A. Loan was availed for the purchase of tractor. After selling the suit land, he admitted to having purchased some other land in UP in the name of his wife Bebi who has filed the present suit on behalf of this minor children. Learned courts below have thus rightly held that the present appellants/plaintiffs have filed the present suit in collusion with respondent No.1, their father with the malafide intention to deprive respondents No.2 and 3 of the benefits of sale deed Ex.P1. They have miserably failed to prove their case. Another argument vehemently urged is that Sompal was under the influence of liquor at the time of execution of the sale deed. Apart from the fact that there is no evidence to prove the said assertion, this plea is negated by the specific admission of Sompal that the sale deed was executed in pursuance to the agreement to sell dated 10.09.2008. Evidence on record proves that consideration had passed to respondent No.1. Therefore, I do not find any merit in the arguments raised on behalf of the appellants.

No other argument has been raised.

Learned counsel for the appellants-plaintiffs are 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 judgements are well reasoned judgements 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 decrees dated 21.11.2013 and 10.10.2016 passed by the

learned Addl. Civil Judge (Sr. Division) Safidon and learned Additional District Judge, Jind, respectively, which warrant any interference by this Court.

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

(LISA GILL)
JUDGE

August 07, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No