

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No. 61 of 2015 (O/M)
Date of decision : 17.1.2018

Ganga Ram and others Appellants

Versus

Rakesh Kumari and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. A.K. Verma, Advocate, for appellants.

Mr. N.D. Achint, Advocate, for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
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KULDIP SINGH J. (ORAL)

The learned counsel for appellants has filed Vakalatnama on behalf of appellants in Court today and same is taken on record.

Impugned in present appeal is the order dated 27.7.2015, passed by the learned Additional District Judge, Mewat, whereby in an appeal against the judgment and decree dated 10.3.2015, passed by the learned Civil Judge (Junior Division), Mewat, the case was remanded back to trial Court with a direction to decide it afresh in the light of observations of the lower appellate Court.

The short facts of the case are that Rakesh Kumari and Bhatni Devi (respondents), daughters of Ganga Ram (appellant), filed a suit against their father Ganga Rama and brother Rambir and others for declaration and permanent injunction, wherein they challenged the relinquishment deed bearing Vasika No. 1272, dated 9.3.2000, executed by their father in favour of their brother Rambir, claiming that said property is

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ancestral property, which was inherited by their father from his father and that after the death of defendant No. 1, land will be inherited by plaintiffs and defendants No. 2 to 5 being legal heirs and said relinquishment deed dated 9.3.2000 will hit their valuable right of inheritance in coparcenary property.

The trial Court framed the following issues :-

1. Whether suit property is ancestral property of parties ? OPP
2. If issue No. 1 is proved whether plaintiff is entitled to declaration to the effect that relinquishment deed bearing vasika No. 1272 dated 9.3.2000 is illegal, null and void ? OPP
3. Whether the plaintiff is entitled to restrain defendants from further alienating the suit property ? OPP
4. Whether the suit is barred by limitation ? OPD
5. Whether the suit is not maintainable ? OPD
6. Whether the plaintiff has no locus standi to file the present suit ?
OPD
7. Whether the plaintiff has concealed the true and material facts from the Court ? OPD
8. Whether the suit of plaintiff is bad for non joinder and mis joinder of necessary parties ? OPD
9. Whether the plaintiff is estopped by his own act and conduct ?
OPD
10. Relief.

The trial Court recorded findings on issue No. 4 against plaintiffs holding that suit is not maintainable and consequently, decided remaining issues No. 1 to 3 also against plaintiffs, whereas issues No. 4, 6

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and 9 were not decided for want of evidence against defendants.

Following question of law has been framed by this Court :-

'Whether the daughters can maintain a suit challenging alienation before the year 2005 when amendment in the Hindu Succession Act was carried out on the ground that suit property is ancestral qua them ?'

I have heard the learned counsels for the parties and have also carefully gone through the file.

It comes out that plaintiffs, who are daughters of defendant No. 1 have challenged the relinquishment deed, executed by their father Ganga Ram in favour of their brother Rambir (defendants) on 9.3.2000, alleging that suit property is ancestral property and that they are coparceners and the said alienation is without legal necessity. Ganga Ram, father is still alive. The daughters were made coparceners by way of amendment in Section 6 of Hindu Succession Act in the year 2005. Therefore, they have right as coparceners qua the ancestral property only after the year 2005. Therefore, the alienation made before the year 2005, could not be challenged on the ground that they have become coparceners and suit property was ancestral qua them. It being so, the suit was prima facie not maintainable and was rightly dismissed by the learned Civil Judge (Junior Division), Mewat. Consequently, other issues No. 1 to 3 were also rightly decided against plaintiffs that they are not entitled to declaration as they cannot challenge the alienation made by their father on the ground that suit property is ancestral qua them. The learned Additional District Judge, Mewat, was not justified in remanding back the case to the trial Court when there were no merits in the appeal. Therefore, there was no illegality or

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infirmity in the judgment and decree dated 10.3.2015, passed by the learned Civil Judge (Junior Division), Mewat. Accordingly, the judgment dated 27.7.2015, passed by the learned Additional District Judge, Mewat, is patently against the law and is hereby set aside. Consequently, the judgment and decree dated 10.3.2015, passed by the learned Civil Judge (Junior Division), Mewat, is restored and instant appeal is allowed.

(KULDIP SINGH)
JUDGE

17.1.2018
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No