

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 1846 of 2018(O&M)
Date of Decision: 22.10.2018**

Om Parkash

---Appellant

versus

Birwati and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Tanmoy Gupta, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration to assail the sale deed dated 25.3.2009 executed by Vijay Singh father of the appellant-plaintiff in favour of Birwati defendant No. 1 on the premise that land subject matter of the sale was coparcenary property in the hands of Sh. Vijay Singh in which the plaintiff-appellant being son of Vijay Singh acquired right by way of birth, therefore, sale of land without legal necessity or for benefit of estate does not hold good and liable to be set aside, has been dismissed.

The Courts have consistently held against the plaintiff-appellant that he has failed to substantiate his plea with regard to suit land being ancestral coparcenary property in the hands of Sh. Vijay Singh, thus, he is not competent to challenge any such sale by his father on any ground

whatever.

Counsel for the appellant would urge that he has filed an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure (in short “the Code”) for additional evidence seeking permission to place on record documents Annexures A-1 to A-3. It is argued that if the documents sought to be produced by way of additional evidence are taken into consideration, it would substantiate plea of the appellant-plaintiff that suit land was inherited by Vijay Singh from his father Balmukand in respect whereof mutation qua inheritance was sanctioned in the year 1971.

I have heard counsel for the appellant and perused the paper book particularly the application for additional evidence.

The application for additional evidence does not fall within the purview and ambit of clause (a) and (aa) of Rule 27 of Order 41 of the Code. This apart, perusal of document Annexure A-3 i.e. mutation qua inheritance to Sh. Balmukand would reveal that the said document does not make reference to kharsa numbers/killla numbers of land which was inherited by Vijay Singh from his father Bakmukand. This apart, this mutation bears No. 162 but the jamabandi for the year 1940-41 pertains to ownership of Ganga Lal etc. and the same makes reference to mutation No. 468 pertaining to inheritance. Counsel has failed to point out any materials on record to connect suit land with the land which was inherited by Vijay Singh from his father Balmukand. In the given circumstances, the appellant has failed to establish his plea that the suit land is ancestral coparcenary property in the hands of Vijay Singh, thus, giving right to the appellant to challenge the sale by Vijay Singh in favour of Birwati. In this view of the

matter, even if the documents Annexures A-2 and A-3 are taken into consideration, the same would not advance case of the appellant to establish his plea with regard to suit land being ancestral coparcenary property.

Another submission made by counsel is that with regard to part of suit land, litigation was initiated by Hari Chand and another on the basis of agreement to sell and suit filed by Hari Chand and another seeking specific performance of contract has been decreed vide judgment dated 5.3.2016 (Annexure A-1) and appeal is pending before the first appellate court. Litigation initiated by Hari Chand and another would have its own consequence with regard to sale deed executed by Vijay Singh in favour of Birwati but the same has no relevance in the present context.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, applications for condonation of delay of 113 days in refiling and 87 days in filing the appeal are of academic relevance only.

(Rekha Mittal)
Judge

22.10.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No