

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA-242-2017 (O&M)

Date of decision: August 02, 2018

Yaseen (since deceased) through LRs

...Appellants

Versus

Sahidan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Mohammad Arshad, Advocate for the appellants.

Rajan Gupta, J.

Present appeal has been preferred to impugn findings of two courts below on the ground that same are perverse and based on misappreciation of evidence.

Plaintiff Yaseen (deceased) through his legal representatives Wahid etc. filed a suit for declaration with consequential relief of permanent injunction against the defendants for declaring sale deed dated 24.11.2010, executed by defendant No.1 in favour of defendant No.2, as null and void. It is alleged that plaintiff was real brother of Dibban alias Wazir, who was owner in possession of land measuring 07 Kanals 11 Marlas, situated in village Nalahar, District Mewat. Dibban alias Wazir had died in the year 1988 and after his death the aforesaid land was inherited by his son Jafruddin. However, later on Jafruddin also died and property was inherited by his mother i.e. defendant No.1 Sahidan, vide mutation No.2360 dated 16.2.2002. It was pleaded that as parties are

from Meo caste and are governed by agricultural custom, therefore, defendant No.1 was not permitted to alienate the property in question in any manner. It is further alleged that defendant No.1 had been living with the plaintiff after death of her husband. She executed a Will on 3.7.2007 in favour of her six daughters i.e. Hasina etc. Earlier plaintiff filed a suit for declaration and permanent injunction against defendant No.1 and her daughters. During pendency of said suit, daughters of defendant No.1 got the Will dated 3.7.2007 cancelled. Thereafter, defendant No.1 sold the suit property to Nooruddin - husband of defendant No.2 on 29.12.2008 for a sum of Rs.10,50,000/-, vide sale deed dated 24.11.2010, executed in favour of defendant No.2, despite injunction order dated 1.9.2007. Hence, plaintiff filed instant suit challenging the sale deed dated 24.11.2010. Suit was resisted by defendant No.2, who took up the plea that the suit property was purchased by her and at that time there was no stay operating with regard to alienation of the same. Defendant No.1 being *KARTA* of the family was competent to alienate the same. Certain issues were framed by the trial court *inter alia* – whether sale deed dated 24.11.2010 and subsequent mutation No.2705 were illegal, null and void. After hearing both the parties and perusing oral as well as documentary evidence, the trial court dismissed the suit. It observed that parties were *Faqir* by caste and the customary law applicable to Meo caste was not applicable. It further observed that the property in question was not ancestral property but it was self-acquired property in the hands of defendant No.1, who sold the same to defendant No.2, when injunction order was not in operation.

Findings were affirmed by the lower appellate court.

I find no infirmity with the findings arrived at by both the courts below. Only plea raised before this court is that judgments of two courts below are based on misappreciation of evidence as well as law. I find no substance in this plea. A perusal of concurrent findings of two courts below reveals that same suffer from no infirmity. No other substantial question of law has been urged.

Dismissed.

(RAJAN GUPTA)
JUDGE

August 02, 2018
'Rajpal'

Whether speaking / reasoned	Yes / No
Whether Reportable:	Yes / No