

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.3419 of 2017(O&M)

Date of decision: 14.05.2018

Chatar Bhuj

... Appellant

Versus

Janardhan Goyal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Manuj Nagrath, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court, vide judgment and decree dated 10.08.2015. As even the appeal preferred against the said decree failed and was dismissed by the appellate Court on 08.11.2016, the appellant-plaintiff is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff filed a suit for declaration that transfer deeds dated 13.06.2011 as regards the property measuring 46.66 sq. yards, as also dated 24.05.2011 regarding 12.44 sq. yards, executed by defendant No.2 in favour of defendant No.1, were wholly illegal, null and void. Further, the sale deed dated 11.07.2011, executed by defendant No.1 in favour of defendant No.3, on the basis of the said transfer deeds, was also liable to be set aside. And

claimed a decree for joint possession, for, plaintiff had 1/3rd share in the suit property. In a nutshell, the case set out by the plaintiff was that the suit property transferred by his father (defendant No.2) in favour of his brother (defendant No.1) was ancestral and co-parcenary, and he being the member of the Joint Hindu Family had a right therein by birth.

In the written statement filed on behalf of defendant No.1, the nature and character of the suit property being ancestral and co-parcenary was denied. In a separate written statement filed on behalf of defendant No.2, the suit property was claimed to be the self-acquired property of defendant No.2 and, therefore, it was maintained that he could always execute the transfer deeds dated 13.06.2011 and 24.05.2011.

Defendant No.3, on the other hand, claimed himself to be the bona fide purchaser for a valuable consideration, and prayed for dismissal of the suit.

On a consideration of the matter in issue, and the evidence on record, both the Courts concurrently concluded that the specific case set out by the plaintiff was that the suit property in the hands of defendant No.2 was ancestral and co-parcenary, for, he inherited the same from his father Pal Chand, who in turn had inherited it from his father Nand Ram. Further, the property measuring 13.02 sq. yards, including the property measuring 12.44 sq. yards, was purchased by defendant No.2 from the income of the Joint Hindu Family. However, to prove that the suit property had indeed devolved from Nand Ram to Pal Chand and then from Pal Chand to defendant No.2 by way of natural inheritance or succession, the plaintiff failed to adduce any cogent evidence. Nothing was brought on record to establish that the great grandfather of the plaintiff i.e. Nand Ram, was the original owner of the suit

property as set out in the plaint. Likewise, no evidence was led to show that property measuring 13.02 sq. yards, including 12.44 sq. yards, as described in the headnote of the plaint, was purchased by defendant No.2 out of the income of the Joint Hindu Family. Thus, it was concluded that unless it was proved by leading cogent evidence that the suit property was inherited by defendant No.2 from three lineal parental ancestors, the same would always be presumed to be non-ancestral in nature. Undoubtedly, the plaintiff had produced the record as regards house tax assessment of house No.B-II 868 for the period from 1978-79 upto 2003-04 (Ex.P2 to Ex.P7), however, an analysis thereof rather revealed that the said house was in the name of Sita Devi wife of Pal Chand, the grandmother of the plaintiff. Thus, the property inherited from the mother or the grandmother could not be termed as ancestral and co-parcenary in nature. Likewise, the records produced by the plaintiff relating to shop No.B-II 517D from 1978-79 to 2008-09 (Ex.P8 to Ex.P14) showed that the said shop was in occupation of defendant No.2 - Som Nath as tenant and it was only the year 2003-04 his name was entered as owner. Therefore, it was not understandable either as to how the property that defendant No.2 occupied as a tenant and subsequently as owner could acquire the character of ancestral and co-parcenary property. In fact, the plaintiff had rather relied upon the transfer deed dated 13.06.2011 (Ex.P18) as also the pedigree table appended therewith (Ex.P18/A), wherein the said property was mentioned as ancestral. But that too was held to be inconsequential as no independent evidence was brought on record to prove that suit property was indeed ancestral and co-parcenary. The pedigree table appended with the transfer deed did not mention the name of the great grandfather of the plaintiff either. Thus, in the given situation, it could not be

presumed that the said property had devolved upon Pal Chand, the grandfather of the plaintiff, from Nand Ram, the great grandfather of the plaintiff. Further, there could not be any estoppel against law, and even if there was some admission as regards the nature of the property being ancestral, in the pedigree table (Ex.P18/A), in ignorance of one's rights, that at best could be termed as erroneous and not binding in nature. And, that being so, the only and the inevitable conclusion that could be reached; for the plaintiff failed to substantiate his claim the suit was liable to be dismissed.

On being pointedly asked, learned counsel for the appellant could not point out anything from the record to show if the conclusions arrived at by both the courts were either contrary to the record or suffered from any material illegality. No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

14.05.2018
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO