

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision-26.09.2018

1. RSA No.3583 of 2017(O&M)

Tayyub ... Appellant

Versus

Bassi and others ... Respondents

2. RSA No.6070 of 2017(O&M)

Tayyub ... Appellant

Versus

Bassi and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Bhanvi Sood, Advocate for
Mr. Adiya Jain, Advocate
for the appellant(s).

RAJ MOHAN SINGH, J.

[1]. Vide this common order, RSA No.3583 of 2017 titled Tayyub Vs. Bassi and others and RSA No.6070 of 2017 titled Tayyub Vs. Bassi and others are being disposed of. Since common question of law is involved in the present appeals, therefore, facts are being taken from RSA No.3583 of 2017.

[2]. Plaintiff is in regular second appeal against the concurrent judgments and decrees passed by the Courts below.

[3]. Plaintiff filed a suit for declaration and permanent injunction with the pleadings that defendant No.1 was owner in possession of the agricultural land measuring 8 kanals 11 marlas situated within the revenue estate of village Kot, Tehsil Hathin, District Palwal to the extent of 1/36th share. She was also owner

in possession of 1/3rd share of the agricultural land measuring 7 kanals 16 marlas. Plaintiff further pleaded that the parties to the litigation are Meos by caste and governed by customary law prevailing in Meo community in the matter of succession and alienation etc. As per custom, widow in Meo community has only limited right of ownership and cannot alienate the property as she can avail maintenance during her life and after her death, the property would revert back to the collaterals of her husband. In a way, life interest was created by the aforesaid custom. Defendant No.1 sold the property to defendants No.2 to 5 vide sale deed dated 23.08.2010 without any consideration and the said sale deed was claimed to be illegal, null and void.

[4]. The suit was contested by the defendants by denying the limited ownership right of widow in Meo community.

[5]. Both the parties went to trial on the following issues:-

*“1. Whether the plaintiff is entitled to decree for declaration to the effect that the sale deed dated 23.08.2010 is illegal, null and void and is liable to be set aside and the subsequent revenue entries on the basis of above said sale deed are illegal, null and void and liable to be set aside?
OPP*

2. Whether plaintiff is entitled to decree for permanent injunction restraining the defendants from alienating the suit land detailed in para No.1-A of the plaint and from creating any charge over the same? OPP

3. *Whether the plaintiff has no locus standi and cause of action to file this suit? OPD*

4. *Whether the plaintiff is estopped by his own act and conduct? OPD*

5. *Whether the suit is not maintainable in the present form? OPD*

6. *Relief.”*

[6]. Plaintiff examined himself as PW 1, Yasin as PW 2 and also tendered some documentary evidence. Defendants examined Abdul Rahman as DW 1, Smt. Anno as DW 2 and defendant No.1 herself stepped into the witness box as DW 3.

[7]. Plaintiff reiterated his stand in respect of limited right of a widow in Meo community during her lifetime. Plaintiff proved documentary evidence i.e. *jamabandies* for the year 2004-05 as Ex.P1 to P3, mutation No.5777 as Ex.P4 and fard badr as Ex.P5.

[8]. On the other hand, defendants submitted that defendant No.1 was owner in possession of the suit property and she sold the same to defendants No.2 to 5 for a lawful consideration. From the sale consideration, defendant No.1 performed marriage of her daughter and also constructed her house. Defendant No.1 claimed that the right enjoyed by her were alike a Karta in the family and a Karta could have sold the property for legal necessity and welfare of the children. Since, she had performed marriage of her daughter and had constructed her house from the sale consideration, therefore, the sale was for

legal necessity in the family. DW 1 Abdul Rahman, DW 2 Smt. Anno and defendant No.1 (DW 3) herself pleaded shattered case of the plaintiff by proving the legal necessity for which the amount was sold.

[9]. In **Ismail and another Vs. Hajra, 2010(1) RCR (Civil) 441**, the rights of widow of Meo community were explained in terms of customary law, where it was held that a woman belonging to Meo community has a right to alienate the ancestral property for legal necessity. It was also observed that custom has strengthened the hands of widow in order to save her from vagaries and destitution. The status of widow in Meo community is alike a Karta of joint Hindu family property who could also sale the joint coparcenary Hindu family property for legal necessity. The widow was held competent to alienate the property for legal necessity. Similar observations were made by the Division Bench of this Court in **Juhar Singh Vs. Giani Talok Singh, 1986 PLJ 346**.

[10]. Since the plaintiff had pleaded that the parties to the litigation were governed by custom, therefore, it was incumbent upon the plaintiff to plead and prove the custom with which the parties were governed. The testimonies of PW 1 and PW 2 would show that after the death of husband of defendant No.1, she had not only performed marriage of her daughter, but also constructed her house. The plea of the plaintiff that the sale deed

was executed without any consideration stood negated even by his own witness in cross examination.

[11]. The finding of facts recorded by the Courts below cannot be held to be perverse or the result of misreading of evidence on record. No law point worth consideration is involved in the present appeals. The present appeals are found to be totally devoid of merits and the same are accordingly dismissed in *limine*.

[12]. Since the appeals have been dismissed on merits, therefore, there is no necessity to pass any order in the miscellaneous applications. The same are accordingly disposed of.

(RAJ MOHAN SINGH)
JUDGE

26.09.2018
Prince

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No