

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4451 of 2017

Date of Decision : 11.01.2018

Rajpal

....Appellant

Versus

Jasmat @ Jaswant Singh and others

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Patter, Advocate
for the appellant.

Mr. B.R. Rana, Sr. Advocate with
Mr. Parveen Kaushik, Advocate
for respondent no. 2-caveator.

Surinder Gupta, J.

Appellant-Rajpal filed suit against his brother Jasmat @ Jaswant Singh, his daughter Shakuntala, wife Hoshiari and Smt. Dhanpati wife of Balwan Singh for declaration that sale deed no. 650/1 dated 17.05.2013, executed by respondent-defendant no. 1-Jasmat @ Jaswant Singh in favour of Smt. Dhanpati, is null and void and not binding on the plaintiff-appellant and proforma respondents, with consequential relief of permanent injunction restraining defendant no. 2-Dhanpati wife of Balwan Singh from taking possession of the suit land forcibly or to alienate the same. The plea of plaintiff-appellant is that the suit land is joint Hindu family ancestral coparcenary property recorded in the name of Jasmat @ Jaswant Singh.

2. Admittedly, the suit property was owned by Lehari, father of defendant-appellant no. 1-Jasmat @ Jaswant Singh and lower Court on the basis of evidence on record has observed as follows:-

“But in present suit, admittedly Lehari (father of defendant no.1 and grand father of plaintiff) was owner of land

measuring 28 killas and he has one son (defendant no.1) and four daughters. If the natural succession of Lehari would have been counted then each legal heirs including Jasmat should have got 1/5th share in his property but admittedly no share was given to daughters namely Birmi, Kitabo, Bhuri and Shanti. It is further admitted fact that said Lehari has relinquished land measuring 12½ killas in favour of defendant no.1 and remaining land has been relinquished in favour of plaintiff Rajpal by way of a decree. Thus, the line of natural succession did not follow. If the plaintiff is claiming that the suit land is ancestral then he has to firstly get canceled the civil court decree executed by his grand father in his favour. The plaintiff has further admitted that defendant no.1 has given 2/3rd share out of his property to his sons. If the plaintiff Rajpal is claiming the property as ancestral in the hands of Jasmat then he should have challenged the entire alienation of the land made through decree or sale deed by defendant no.1 Jasmat. Moreover, it is proved on record that the natural succession would have been totally different. Therefore, the case laws as relied on by plaintiff is not applicable in present case.

Thus, it is clearly proved that the basic requirement of ancestral property that the property should has been inherited by Jaswant from his father has not been proved on record. The property in the hand of Jasmat has not been proved on record to be his ancestral property rather the same is his self acquired property. There is no document on record from which it could be deduced that the suit property to the extent of share of plaintiff has been inherited by Jasmat from his father Lehari. The revenue records as placed on record are in any case inadequate to prove the ancestral nature of suit property and once it is proved that the property was not ancestral in the hand of Jasmat then he was at liberty to deal with the property in the manner he intended and as such he was very well within his rights to execute sale deed in favour of

defendant no.2 as a person has full right to deal with his self acquired property in the manner he deems fit. Therefore, the sale deed as executed by defendant no.1 in favour of defendant no.2 cannot be said to be executed by him without having any right or title to do so. This court has no different view than the case laws cited by plaintiff but same are not relevant in present case being having different facts.”

3. Above observations were affirmed by learned Ist Appellate Court with the observation that the suit property in the hands of defendant-respondent no. 1-Jasmat @ Jaswant Singh is his self acquired property.

4. Not satisfied, plaintiff-appellant has filed this regular second appeal again raising the issue that suit property is joint Hindu family ancestral coparcenary property.

5. Learned counsel for the plaintiff-appellant could not dispute that Lehari, father of defendant-appellant no. 1 and grandfather of plaintiff-appellant had given land measuring 12½ *killas* to defendant-respondent no. 1-Jasmat @ Jaswant Singh and remaining land out of total 28 *killas* owned by him to plaintiff-appellant. Learned counsel for the plaintiff-appellant fairly conceded that there is no evidence from whom Lehari had inherited the property, meaning thereby that property in the hands of his grandfather was his self acquired property. In case it was ancestral coparcenary property, the transfer of major chunk of property by Lehari in favour of plaintiff could not be legally sustained, during the life time of his father. Suit land, which Jasmat @ Jaswant Singh got from his father Lehari through a consent decree, cannot be termed as ancestral property, as it was not inherited by mode of survivorship. When confronted with this aspect of the case, learned counsel for appellant could not explain, firstly as to how

was his self acquired property, how the share of his land given to Jasmat @ Jaswant Singh (defendant no. 1) has attained status of joint Hindu family coparcenary property. Thirdly, if the land measuring 28 *killas* owned by Lehari, grandfather of plaintiff was joint Hindu family coparcenary property, how could plaintiff get major chunk of it from Lehari by way of consent decree and fourthly, in the absence of any evidence of mode of inheritance of land owned by Lehari from his ancestors, how the plaintiff can claim the land which his father got from Lehari by way of consent decree as ancestral. Consequently, I find no infirmity in finding of Courts below that suit land was not proved to be ancestral coparcenary joint Hindu family property in the hands of Jasmat @ Jaswant Singh and its alienation vide sale deed dated 17.05.2013 is legal.

The instant appeal has no merit and the same is dismissed.

January 11, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No