

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

RSA No.4911 of 2017 (O&M)

Date of decision : 01.06.2018

Lal Chand and others

...Appellants

Versus

Munshi Ram and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. D.V. Sharma, Sr. Advocate with  
Mr. Lal Chand, Advocate and  
Ms. Shivani Sharma, Advocate for the appellants.

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**ANIL KSHETARPAL, J. (ORAL)**

**CM No.8943-C of 2018**

Application is allowed, as prayed for.

**Main Case**

The plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiffs had filed a suit for declaration claiming that the transfer deed executed by defendant No.1-Munshi Ram in favour of defendant No.2-Krishna Devi, his daughter, is illegal as the property is ancestral coparcenary property and as such it could not be transferred in favour of daughter by the father.

The defendants including Munshi Ram, the father contested the suit and pleaded that the property is neither ancestral nor coparcenary.

Both the Courts after appreciation of the evidence available on the file, dismissed the suit filed by the plaintiffs. Before the First Appellate Court, the plaintiffs filed an application for additional evidence which was allowed

and even after taking into consideration those additional documents, the plaintiffs failed to prove that the property is ancestral in nature.

It has come on record that Bhola Ram, Grandfather of the plaintiffs and defendant No.2 and father of Munshi Ram-defendant No.1 sold the land vide registered sale deed dated 04.07.1961 (at some places, the date has wrongly been mentioned as 07.09.1961) to Smt. Kulwant Kaur. The aforesaid sale was subject matter of a pre-emption suit filed by Munshi Ram-defendant No.1, Amar Nath and Kishan Chand. The aforesaid suit was decreed on 31.07.1963. Still further, it has come on record that Munshi Ram and his brothers purchased through registered sale deed the land measuring 97 kanals and 3 ½ marlas dated 31.07.1961 (in the judgment of First Appellate Court, the date has wrongly been mentioned as 31.07.1962).

The plaintiffs are now claiming that the amount of sale consideration at the time of purchase of the property was contributed by Bhola Ram, Grandfather from the sale consideration received under sale deed dated 04.07.1961 noticed above. However, both the Courts on appreciation of the evidence have found that the sale consideration has not been connected with the consideration paid by Munshi Ram, Amar Nath and Kishan Chand. Still further, the plaintiffs failed to prove that Munshi Ram, Amar Nath and Kishan Chand were not earning and, therefore, the amount payable under pre-emption decree was also paid by Sh. Bhola Ram from Hindu Undivided Family Corpus.

Learned Senior Counsel has submitted that when Munshi Ram executed the transfer deed and got it registered, he was not of sound mind being ill.

This Court has considered the submission. However, do not find

any substance therein. Munshi Ram executed the transfer deed in favour of his daughter on 23.05.2005. He remained alive for approximately three years after the execution and registration of the aforesaid document. No evidence has been produced to prove that Munshi Ram was not in sound disposing mind. Still further, Munshi Ram was defendant No.1 in the present suit, instituted on 21.01.2006. Munshi Ram filed a written statement admitting the transfer of the property in favour of daughter and rather defended the transfer deed.

Learned Senior Counsel stressed on the point that since Munshi Ram, Amar Nath and Kishan Chand had purchased the property after 27 days from the sale of the property by Bhola Ram, their father, therefore, it must be assumed that the sale consideration received on account of the sale of the property was utilized for purchase of the property by sons. However, such assumption cannot be drawn in absence of any evidence available on the file. It is for the plaintiffs to prove that the amount of sale consideration received by father was utilized by the sons.

In view of what has been discussed above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**01.06.2018**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:- Yes/No**

**Whether reportable:- Yes/No**