

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5382 of 2017(O&M)

Date of Decision: 7.8.2018

Ranjit Singh

---Appellant

versus

Surjit Kaur through LR's and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Vikas Singh, Advocate
for the appellant**

Rekha Mittal, J.

CM No. 14375-C of 2017

Prayer in this application is for condoning delay of one day in filing the appeal.

Allowed as prayed for. Delay of one day in filing the appeal stands condoned.

Disposed of accordingly.

RSA No. 5382 of 2017

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for declaration and permanent injunction filed by the plaintiff-appellant claiming the suit property to be joint Hindu family coparcenary property and challenge to transfer deed, Wasika No. 801 dated 2.7.2008 executed by Surjit Kaur wife of Gurcharan Singh in favour of her three sons namely Hakam Singh, Bahadur Singh and

Balwinder Singh (real brothers of the appellant-plaintiff) was dismissed by the trial court vide judgment and decree dated 29.9.2014 and appeal preferred by unsuccessful plaintiff did not find favour with the Additional District Judge, Patiala.

Counsel for the appellant would urge that the appellant filed an application under Order 41 Rule 27 of the Code of Civil Procedure (in short “the Code”) for permission to lead additional evidence by producing on record certified copies of the order and plaint of earlier suit titled “Mohinder Singh vs. Hakam Singh” but the same was wrongly rejected by the Court in Appeal. It is argued that the appellant raised a plea that Surjit Kaur is not in a sound state of mind; she is more than 95 years of age; hard of hearing and cannot speak properly; unable to understand her good or bad and thus not in a position to execute the transfer deed in favour of defendants No. 2 to 4. Further argued that prior to institution of the present suit, another son of Surjit Kaur namely Mohinder Singh proforma respondent No. 6 instituted a suit raising the same allegations that Surjit Kaur is not in a sound disposing mind. It is further argued that the documents pertaining to litigation initiated by Mohinder Singh are very material for deciding the plea raised by the appellant with regard to mental condition of Surjit Kaur, therefore, the judgment passed by the Court in Appeal may be set aside and the matter be remitted to the Court in appeal for decision afresh by allowing the appellant to adduce additional evidence.

The first ground of challenge to the transfer deed is that the suit property is joint Hindu family coparcenary property, therefore, the appellant being entitled to a right in suit land being one of the coparceners. Perusal of the judgments passed by the courts would reveal that the

appellant failed to adduce any evidence much less cogent and convincing to prove the suit land to be joint Hindu family coparcenary property. As such, findings of the courts rejecting plea of the appellant with regard to nature and status of suit land are liable to be affirmed.

The second plea raised by the appellant is that as Surjit Kaur was not in a sound disposing mind, she was not competent to execute the transfer deed dated 2.7.2008 in favour of Hakam Singh and others. The appellant sought to draw support from allegations raised by Mohinder Singh, another son of Surjit Kaur with regard to mental ability of Surjit Kaur to dispose of her property or suit land. The documents were sought to be produced by way of additional evidence by invoking Order 41 Rule 27 of the Code. Counsel would fairly inform that these documents were a part of records of the trial court but the same were not marked or exhibited. Firstly, the very fact that the documents were a part of records of the trial would show that evidence sought to be adduced by way of additional evidence was well within the knowledge of the appellant, therefore, no such plea is available to him that these documents could not be produced despite exercise of due diligence. It has also been revealed from the record that suit filed by Mohinder Singh was dismissed in default on 24.5.2008 meaning thereby that allegations raised by Mohinder Singh are mere allegations which have not withstood scrutiny by a competent court of law. Counsel for the appellant has failed to point out any materials on record to establish the plea that Surjit Kaur was not mentally sound, therefore, rendered incapable to enter into a contract. In the given scenario, even if the plaintiff is permitted to prove the documents pertaining to litigation initiated by Mohinder Singh, it would not be of consequence to prove mental condition

of Surjit Kaur. In this view of the matter, I do not find an error much less illegality in the order passed by the Court in Appeal dismissing application for additional evidence. In view of the above, the judgments passed by the courts do not suffer from an error much less perversity warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

7.8.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No