

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

RSA No.55 of 2017 (O&M)

Date of Decision: 18.07.2018

Sushila Devi

... Appellant

Versus

Bharat Bhushan and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. M.S.Bedi, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

Plaintiff/appellant is in second appeal having remained unsuccessful in both the Courts below.

Brief facts of the case are that the plaintiff filed a suit seeking declaration to the effect that plaintiff and proforma defendants are owners in possession of 1/3rd share out of total land measuring 39 kanals 16 marlas in equal share, situated in Mauza Lohar, Tehsil and District Bhiwani claiming the same to be ancestral land. A release deed No.2137 dated 03.08.2000 executed by Janardhan Dass @ Janardhan Dutt Gaur in favour of contesting respondents, mutation No.14188 dated 02.09.2000 sanctioned in pursuance to release deed and jamabandi for the year 2002-03 prepared on the basis of such mutation were also put to challenge. The consequential relief of permanent injunction was also sought to restrain the contesting defendants from interfering, alienating and transferring the suit land on the basis of the release deed,

sanctioned mutation and jamabandi.

Plaintiff stated that the suit land as detailed and described in the head note of the plaint was owned and possessed by Janardhan Dass @ Janardhan Dutt Gaur i.e. father of the plaintiff and such suit property is Hindu coparcenary property and Janardhan Dass had inherited the same from his forefather. As per plaintiff, she had acquired a birth right in the suit property and as such plaintiff and proforma defendants are owners to the extent of 5th share in the suit property.

Notice having been issued, contesting defendant Nos.1 and 2 filed a written statement and took a stand that suit property is not ancestral and was rather exclusively owned and possessed by Janardhan Dass and who as such was competent to execute the release deed dated 03.08.2000. Further objection was taken that Janardhan Dass had not even been impleaded as a party in the suit, even though he was very much alive and as such the suit is bad for non-joinder of necessary parties.

Upon pleadings of the parties, the following issues were framed by the Trial Court:

- 1) "Whether the plaintiff is entitled to the decree for declaration on the grounds alleged in the plaint?OPP***
- 2) If issue No.1 is proved whether plaintiff is entitled to the relief of permanent injunction as prayed for?OPP***
- 3) Whether the suit of the plaintiff is not maintainable in the present form? OPD***

4) Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD

5) Whether the suit of the plaintiff is bad on account of non joinder and mis-joinder of necessary parties?OPD

6) Whether the suit of the plaintiff is time barred?OPD

7) Relief.”

Suit of the plaintiff was dismissed vide decision dated 15.04.2013 by the trial Court and a civil appeal preferred by the plaintiff has met the same fate vide judgment dated 31.08.2016 passed by the learned Additional District Judge, Bhiwani. Thus, the instant second appeal at the hands of plaintiff.

Counsel for the appellant has been heard at length.

The concurrent finding has been recorded by the Courts below that the plaintiff has failed in proving nature of the suit property as ancestral. Counsel for the appellant on a specific query having been put concedes that no cogent and credible evidence had been adduced on record to prove nature of the suit property as ancestral. It was not even the case of the plaintiff/appellant that the release deed was executed as a result of fraud. That apart the Courts below have taken a view that prior to the amendment in Section 6 of the Hindu Succession Act, 1956, daughters were not coparceners in the property and they had no right in the ancestral property by birth and as such the plaintiff/appellant herein had no right to challenge the alienation that took place prior to the amendment in the year 2005. Counsel

has not addressed any submission against such view having been taken.

It is also the conceded position of fact that Janardhan Dass i.e. father of the plaintiff and author of the impugned release deed was very much alive on the date of institution of the suit. No justification whatsoever has come forth for not having impleaded Janardhan Dass as a party to the lis.

In the considered view of this Court, the impugned judgments are well reasoned and are based on due appreciation of evidence.

No interference in the case is warranted.

Appeal dismissed.

Since the main appeal itself has been decided, pending application(s), if any, shall stand disposed of.

18.07.2018
vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No