

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

**R.S.A No.6404 of 2017(O&M)
Date of decision :11.10.2018**

Harpal Singh

..... Appellant.

Versus

Assa Singh (since deceased) through his legal representatives.

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.R.S.Chauhan, Advocate
for the appellant.

LISA GILL,J

Appellant-plaintiff is aggrieved of judgement and decree dated 14.08.2013, passed by the learned Civil Judge (Jr. Division), Ferozepur, as well as judgement and decree dated 17.05.2016, passed by the learned Additional District Judge, Ferozepur, whereby the suit filed by the appellant-plaintiff has been dismissed.

Brief facts necessary for the adjudication of the case are that plaintiff-appellant filed a suit for declaration to the effect that he is a co-owner to the extent of 1 /4th share out of the suit property as detailed in the plaint and that transfer deed dated 27.10.2004 executed by Assa Singh originally defendant no.1, the plaintiffs father in favour of defendant no.2-Iqbal Singh, the plaintiff's brother, is illegal, null, void

and inoperative *qua* the plaintiff as it had been executed without any legal necessity. Further prayer for injunction for restraining defendant-Iqbal Singh from alienating the land in dispute was sought. It was pleaded that the land in dispute was coparcenary property in the hands of Assa Singh as he had inherited the same from his father (plaintiff's grandfather-Sohan Singh and great grandfather-Sadda Singh). Both Sadda Singh and Sohan Singh had passed away. Therefore, the property in dispute was the coparcenary property. Assa Singh had three sons namely, the plaintiff-Harpal Singh, Iqbal Singh and Rachhpal Singh, who had since passed away. Respondent no.2-Sukhwinder Kaur, is the widow of Rachhpal Singh. It was thus pleaded that the plaintiff was the co-owner of the suit property to the extent of 1/ 4th share. Transfer deed dated 27.10.2004 in respect to land measuring 62 Kanals in favour of defendant no.2 was pleaded to be without any legal necessity and merely with an intention to cheat the plaintiff and defendant no.3. It was further stated that the plaintiff had been involved in a false criminal case under section 302 IPC. The said case was registered against the plaintiff by brother-in-law of Iqbal Singh on 02.08.2004 and thereafter in order to grab the plaintiff's share, transfer deed dated 27.10.2004 was executed in favour of Iqbal Singh. The same being the result of collusion was liable to be set aside. It was pleaded that the plaintiff approached Iqbal Singh on 26.07.2007 to admit his claim, but he refused. Hence the suit.

Defendant-Sukhwinder Kaur, did not appear despite service and was proceeded against *ex parte* on 30.05.2008.

Defendant-Assa Singh and Iqbal Singh, father and brother of

the plaintiff respectively, resisted the suit. Various preliminary objections were raised in the written statement and contentions on merits were controverted. It was stated that Sadda Singh owned 242 Kanals of land, which was inherited by Sohan Singh and thereafter by Assa Singh. Assa Singh separately purchased 7 Kanal 7 Marlas of land from one Pala Singh about 40 years ago. 4 Kanals out of the said land was sold 7 years ago. Assa Singh was left with 3 Kanal 3 Marlas of land, which was his self acquired property. 7 Kanals of land was also purchased by Assa Singh through an auction conducted by the State Government about 40 years ago. The said land was with him as his self acquired property. Assa Singh, possessed 242 Kanals of land situated in village Tibbi Khurd, which was acquired by Assa Singh from his father Sohan Singh which was divided by way of a family settlement amongst Assa Singh and his three sons somewhere in the year 1960-61 in equal shares i.e. 1/4th share each fell to Assa Singh and his three sons. Each of them occupied specific and exclusive portion fallen to them. Thereafter, the plaintiff was residing separately from Assa Singh and other family members. He was separate in residence, mess and cultivation. Civil Suit No. 1660 of 1972 was filed by the plaintiff-Iqbal Singh and Rachhpal Singh, wherein they claimed a decree for possession of land measuring 181 Kanals 10 Marlas being 3/4th share of land measuring 242 Kanals owned by Assa Singh. This suit was decreed on 09.05.1972. Assa Singh executed a transfer deed dated 27.10.2004 in favour of Iqbal Singh transferring 62 Kanals of his land i.e. 1/4th share in the total land. Actual possession thereof was delivered to Iqbal Singh, who was in possession thereof. Assa Singh was

stated to be 76 years old, living with Iqbal Singh and being looked after by Iqbal Singh, as well. It was denied that there was any joint Hindu family of Assa Singh with the plaintiff or that there is any coparcenary joint property over which the plaintiff had any claim. Plaintiff was stated to be involved in a criminal case under Section 302 IPC for murder of one Budh Singh son of Angrej Singh, resident of Chak Tahliwala. Prayer for dismissal of the suit was made.

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to the declaration as prayed for?OPP
2. Whether the suit is not maintainable for want of purpose of court fee and jurisdiction?OPD
3. Whether this suit is not maintainable in the present form?OPD
4. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court on considering the facts and circumstances of the case concluded that transfer deed dated 27.10.2004 was validly executed in respect of land which was not the joint Hindu coparcenary property. Therefore, suit filed by the plaintiff was dismissed.

Appeal filed by the appellant was also dismissed by the learned Additional District Judge, Ferozepur, vide judgement and decree dated 17.05.2016.

Aggrieved therefore, the present appeal has been filed.

Learned counsel for the appellant argues that the property in

question was ancestral property, therefore the plaintiff's father could not have executed the transfer deed Ex.P-1. It is thus prayed that the present appeal be allowed and suit filed by the appellant-plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with her able assistance.

Learned counsel for the appellant is unable to dispute that the Civil Suit No. 166 of 1972 filed by Iqbal Singh and Rachhpal Singh was decreed on 07.05.1972. PW-1-Harpal Singh i.e. the plaintiff, specifically admitted that the said decree was passed by the Court of competent jurisdiction in the year 1972, wherein land measuring 181 Kanals 10 Marlas was given to him along with Rachhpal Singh and Iqbal Singh in equal shares, whereas, the remaining part of the property measuring 62 Kanals 10 Marlas remained with their father-Assa Singh. It is specifically admitted by PW-1 that the Khasra Girdawri/entries of the separate parcels of land was duly incorporated in the revenue record in the names of Rachhpal Singh, Iqbal Singh and Assa Singh. PW-3-Punjab Singh, also admitted that Assa Singh during his lifetime suffered a decree qua the land in favour of his three sons in equal shares while retaining 1/4th share with himself. PW-3 in-fact admitted that Assa Singh rightly transferred the land vide document Ex.P-1 in favour of defendant no.2 i.e. Iqbal Singh.

It is relevant to note, at this stage, that the present suit was filed by the plaintiff on 10.08.2005. Assa Singh died during the pendency of this suit and another civil suit was filed by the plaintiff on 30.09.2010

claiming to be a co-sharer of the suit property to the extent of 1/ 3rd share in the suit property and the plaintiff also impugned the will dated 17.09.1999 executed by Assa Singh in favour of Iqbal Singh. The said suit was dismissed by the learned trial Court on 20.11.2014. Appeal filed by the plaintiff against the said decision was also dismissed on 17.05.2016 by the learned Additional District Judge, Ferozepur. The said judgements are under challenge in R.S.A No. 5867 of 2016 preferred by the present appellant. The said appeal has also been dismissed by this Court vide order of even date.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 14.08.2013 and 17.05.2016 passed by the learned Civil Judge (Jr. Division) Ferozepur and learned Additional District Judge, Ferozepur, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

11.10.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No