

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

**R.S.A No.845 of 2017(O&M)
Date of decision :05.07.2018**

Krishal Lal (deceased) through his LRs and others

..... Appellants

Versus

Ram Lal (deceased) through his LRs and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. K.P.Singh, Advocate
for the appellant.

LISA GILL,J

The present appeal has been directed against the judgment and decree dated 03.08.2013 passed by the learned Civil Judge (Jr. Division), Abohar, whereby suit filed by the appellant-plaintiffs has been dismissed as well as judgment and decree dated 13.09.2016 passed by the learned Additional District Judge, Fazilka, whereby their appeal against the said judgment has also been dismissed.

At the outset, it is noted that the plaintiffs Krishan Lal, Hans Raj (both since deceased and represented by their legal representatives), Subhash and defendants Manohar Lal and Jagdish are real brothers. Defendant-respondent Ram Lal (since deceased) is their father.

Brief facts necessary for the adjudication of the case are that

the appellant-plaintiffs filed a suit for declaration to the effect that notwithstanding anything contained to the contrary in the revenue record or any deed of title, the plaintiffs are owners in possession in equal shares of the suit land alongwith the defendants, with a further prayer that transfer deed dated 19.03.2008 executed by defendant-respondent no.1- Ram Lal (since deceased) in favour of defendant-respondents no.2 and 3, is illegal, null, void and inoperative qua the rights of the plaintiffs. Consequential relief of permanent injunction restraining respondents no.2 and 3 from alienating the suit property was also prayed for. Pledged case of the appellant-plaintiffs was that the plaintiffs constituted a Hindu Joint Family alongwith the defendants. Respondent no.1 was the Karta of the joint family. The suit land measuring 141 K- 5 M in village Gumjal, Tehsil Abohar, was stated to be joint Hindu property of the parties purchased from the common funds. It was claimed that the plaintiffs and defendants are owners in joint possession of the suit land in equal shares. Defendant no.1 executed a transfer deed dated 19.03.2008 in favour of defendants no.2 and 3 and mutation in this regard was entered as well. Defendant-respondents denied the title and right of the appellant-plaintiffs over the suit property despite requests by the plaintiff. With these averments, the present suit was filed.

The same was contested by the respondents while filing separate written statements. Respondent no.1 claimed that the suit property was his self acquired property. He was earlier a tenant over the suit property and cultivating the same with the help of respondents no.2 and 3. It was stated that the suit property was subsequently purchased by

respondent no.1 for consideration and thereafter transferred to respondents no.2 and 3 by transfer deed dated 19.03.2008. It was denied that the appellant-plaintiffs had any concern with the property. Share of the appellants had already been given by way of property at Rajasthan in Tehsil Khajuwala. They were in possession of their respective shares. Furthermore, appellants were stated to be present at the Court complex at Khuian Sarwar, at the time of execution of the transfer deed. Relationship between the parties is admitted. It is stated that the present appellants obtained signatures of defendant no.1-Ram Lal (since deceased) on blank papers about 15 to 20 days prior by threatening Ram Lal that in case, he did not append his signatures, the appellants would commit suicide.

Respondents no.2 and 3 filed separate written statement denying the claim of the appellant-plaintiffs.

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

1. Whether the plaintiffs are entitled to declaration as prayed for?OPP
2. Whether the plaintiffs are entitled to permanent injunction as prayed for?OPP
3. Whether the plaintiffs have no locus standi or cause of action to file the present suit?OPD
4. Whether the suit is not maintainable?OPD
5. Whether plaintiffs have concealed true and material facts from the Court, if so, its effect?OPD.
6. Relief.

Evidence was led by both the parties.

Issues no.1 and 2 were decided against the plaintiffs and issues no.3, 4 and 5 against the defendants being not pressed. Suit filed by the appellant-plaintiffs was accordingly dismissed while holding that

the suit property in question was the self acquired property of defendant no.1-Ram Lal.

Appeal filed by the present appellants was also dismissed by the learned Additional District Judge, Fazilka, vide judgment and decree dated 13.09.2016. Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellants vehemently argues that the suit property in question was the ancestral joint property of the parties. Specific reference is made to affidavit dated 03.06.2010 (Ex.P-4) by defendant Ram Lal (since deceased), wherein he specifically recorded that transfer deed dated 19.03.2008 in favour of defendants no.2 and 3 was obtained by misrepresentation of facts. The said affidavit, it is submitted was duly proved by PW-3-Rupinder Singh. Application for leading additional evidence was wrongly dismissed by the learned trial Court as otherwise the plaintiffs would even have examined the fingerprint/hand writing expert. Learned counsel for the appellant argues that in view of the abovesaid affidavit, both the learned Courts have grossly erred in dismissing the suit filed by the appellants. It is thus prayed that this appeal be allowed and the impugned judgments and decrees dated 03.08.2013 and 13.09.2016 passed by learned Civil judge (Jr. Division), Abohar and learned Additional District Judge, Fazilka, respectively, be set aside.

I have heard learned counsel for the appellants and have gone through the file with his able assistance.

Learned trial Court has specifically referred to the testimony

of plaintiff-Krishan Lal (PW-1), wherein he specifically admitted in his cross-examination that the property situated in the State of Punjab is in the name of his father-Ram Lal. None of the properties in Punjab were in the name of his grandfather-Kachwa Ram. PW-1 further admitted that the properties standing in the name of his father at Punjab and Rajasthan, are self acquired properties of his father. The execution of the transfer deed is not in dispute. PW-1 has categorically admitted that his father-Ram Lal, was the tenant of Ram Pratap, who was the earlier owner of the suit land. It is further admitted that PW-1 alongwith his brothers Hans Raj, Madan Lal, Subhash and Rai Sahib, are living in Rajasthan. PW-1 clearly admitted the transfer deed executed by his father in favour of respondent-Manohar Lal and Jagdish however sought to explain that it is prejudicial for him. There is indeed no evidence on record to prove that the property in question was the joint Hindu co-parcenary/ancestral property.

Much stress has been laid by learned counsel for the appellants on affidavit dated 19.03.2008 (Ex.P-4) allegedly executed by Ram Lal to urge that the transfer deed is illegal and nullity. A perusal of the file however does not substantiate this argument in any manner. It is rightly held by the learned trial Court that Ram Lal-defendant no.1 in his written statement has specifically taken a stand that he executed transfer deed dated 19.03.2008 in favour of respondents no.2 and 3. Remedy was available with defendant no.1 to challenge the same, but he has admitted the said transfer deed in his written statement. There is a mention in the written statement filed by Ram Lal that fifteen-twenty days prior the plaintiff approached Ram Lal and under coercion, pressure and threat of

committing suicide obtained his signatures on blank papers, stamp papers and Vakalatnama. Thus, the said affidavit does not come to the aid of the appellants. Moreover, PW-1 has admitted that the suit land is the self acquired property of his father. There is not an iota of evidence on record to show otherwise. Therefore, there is no infirmity in the findings returned by both the learned Courts below.

No other argument has been raised.

Learned counsel for the appellant-plaintiffs 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. Impugned judgments dated 03.08.2013 and 13.09.2016 passed by the learned Civil Judge (Jr. Division) Abohar and learned Additional District Judge, Fazilka, respectively are well reasoned, logical and rendered after proper appreciation and consideration of the evidence on record which warrant no interference.

Keeping in view the facts and circumstances as discussed above, present appeal is accordingly dismissed with no order as to cost.

05.07.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No