

RSA-2824-1988 (O&M)

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

**RSA-2824-1988 (O&M)
Date of decision : 11.04.2019**

Brij Bhushan

... Appellant

Versus

Darshana Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate
for the appellant.

None for the respondents.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the suit of the respondent-plaintiffs, daughters of common ancestor-Matu Ram, for declaration with consequential relief of possession, though dismissed by the trial Court, has been decreed, granting declaration of ½ share, in respect of the suit property.

The respondents-plaintiffs sought the declaration to the effect they were owner to the extent of 3/4th in respect of the house by challenging the sale deed dated 09.04.1980, executed by defendant No.3 in favour of defendant No.1. It was alleged that Matu Ram was the owner of the house. He, on 30.08.1979, died, leaving behind defendant Nos.2 & 3, his sons and plaintiffs his daughters. He died intestate. However, defendant No.3-Sadhu Ram, in collusion with defendant No.2-Gurdial Singh, sold the land to

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defendant No.1, for a consideration of ₹7500/- vide registered sale deed dated 09.04.1980. It was self acquired property and therefore, in the absence of any testamentary document, rule of natural survivorship would apply.

Defendant No.1 opposed the suit and claimed himself to be *bona fide* purchaser as per the provisions of Section 41 of the Transfer of Property Act as well as taken an alternative plea that in case, the partition had not been taken place, the whole property, in the site plan dated 27.03.1981, had been in the ownership of Matu Ram and defendant No.2 was accorded exclusive owner in yellow colour of the suit property, whereas defendant No.3 to be exclusive in the red colour of the suit property. There is already a deemed partition. The whole house shall be construed to be joint property of the plaintiff and defendant Nos.2 & 3, and defendant No.1 shall become owner to the extent of 2/5th share of the whole house. It is a matter of record that widow of Matu Ram also died.

On the basis of the pleadings, the trial Court framed the following issues:-

- 1. Whether the plaintiffs have got 3/4th share in the house in suit? OPP*
- 2. Whether the sale deed dated 9.4.1980 made by defendant No.3, in respect of the house in dispute is null, void, illegal and not binding over the rights of the plaintiff? OPD*
- 3. Whether the suit is not properly valued for the purposes of Courts fee and jurisdiction? OPD*
- 4. Whether the sale in favour of the defendants is protected under law? OPD*
- 5. Whether the plaintiff has no locus standi? OPD*
- 5 (a) Whether the suit of the plaintiff is mis-conceived? OPD*

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5(b) Whether the property in dispute is joint property of the plaintiff and defendant Nos.2 and 3? OPD

5(c) Whether the defendant No.2 is debarred from claiming any right to the property? OPD

5(d) Whether the suit property is co-parcenary property of the defendant Nos.2 and 3 and their father? OPD

6. Relief.

Both the parties led extensive evidence.

The trial Court dismissed the suit, but the lower Appellate Court reversed it.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellant submitted that the sale deed is of 1980. The plaintiff had been in possession of the entire property. It would be too anarchical for putting the clock back by conferring the status to the defendants that of co-owner. The lower Appellate Court failed to advert the fact that the daughters, at that time, did not have the right to inherit the share of the father. The sale deed was attested and witnessed by the other brother. Both of them had acknowledged the sale of the property. It is only a case of distribution of the sale consideration, but under such garb, defendant No.1 cannot be grinded.

There is no representation on behalf of the respondents.

Since the appeal is of the year 1988, I proceed to decide the same on merits.

I have heard learned counsel for the appellant, appraised the paper book as well as records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Goel.

It is a matter of record that Matu Ram died intestate. All the siblings/children would have a right to succeed, after the demise of their

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mother to the extent of 1/4th share. The sale made by one brother would only be confined to his share and not to the entire. No evidence has been placed on record that the property was coparcenary. The daughters did not have the right till the amendment caused in Section 6 of the Hindu Succession Act, w.e.f. September 2005.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court, much less, no substantial question of law arises for determination. No ground is made out for interference. Resultantly, the second appeal is dismissed.

11.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**