

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.1948 of 2010 (O&M)

Date of Decision:04.02.2019

Gulzar Singh and another

...Appellant(s)

Versus

Maninder Singh and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Aman Pal, Advocate for the appellants.
Mr.Sumit Mahajan, Senior Advocate with
Mr.Amit Kohar, Advocate and
Mr.S.S.Momi, Advocate for the respondents.

ANIL KSHETARPAL, J.

The plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below, while dismissing the suit filed by them for declaration challenging gift-deeds executed and got registered on 10.08.1999 by Bishan Singh in favour of his grand sons Maninder Singh and Iqbal Singh.

Plaintiffs are sons of Bishan Singh, who claims that the property is ancestral and as such Bishan Singh had no right to execute the gift deeds. It was further pleaded that the property in question was partitioned vide agreement-cum-award dated 08.05.1998 by the Arbitrator .

In the present suit, Bishan Singh was impleaded as defendant No.3. Defendants contested the suit by filing a joint written statement including Bishan Singh, wherein it was pleaded that since Bishan Singh is not party to the agreement-cum-award dated 08.05.1998 by the Arbitrators, therefore, it is not binding on him. It was further pleaded that the property,

which has been gifted, was exclusive property of Bishan Singh who gifted it to his grandsons.

Both the courts as noticed above dismissed the suit after recording a finding that the plaintiffs have failed to prove that the property was ancestral, coparcenary joint Hindu Family property.

This Court has heard the learned counsel for the parties and with their able assistance gone through the impugned judgments passed by the courts below and the record.

In the considered opinion of this Court, there is no substance in the appeal for more than one reason.

The parties were heavily into litigation and it has come on the record that the property in dispute was initially subject matter of litigation in Civil Suit No.357 of 1988 which resulted into a decree dated 15.9.1988. Neither the judgment nor the decree dated 15.9.1988 has been produced. However, it has come in evidence that a civil suit was filed, challenging the judgment and decree dated 15.9.1988 and the plaintiffs herein were defendants in the aforesaid suit. In the aforesaid suit, the appellants herein (defendants in the suit which was filed challenging the decree dated 15.9.1988) had taken a stand that the property is joint hindu family coparcenary property. However, they failed to prove the fact that decree dated 15.9.1988 was set aside vide judgment and decree dated 16.11.1998.

Plaintiffs have failed to disclose as to what was the total property of the family. No substantive cogent evidence has been produced to prove that the property is ancestral coparcenary property. Plaintiffs are merely relying upon the plaint which was filed by Bishan Singh, asserting that large property including the property in dispute had been purchased

after selling some property in the State of Punjab, however, no record in support thereof has been produced. In such circumstances, it will not be proper to give a decision merely on the basis of pleadings in the previous suit.

In any case, once there was litigation between the parties which resulted into judgments and decrees dated 15.9.1988 and 16.11.1998, the parties would not thereafter continue to be members of joint hindu family and the property would not be ancestral and coparcenary. Still further, it has been proved on file that Bishan Singh had purchased some part of the property in dispute vide sale deeds dated 24.06.1964, 08.06.1966, 30.03.1967 and 27.05.1967 etc.

Further as per Ex.P3, a copy of plaint filed by Bishan Singh, it is apparent that the family was owner of approximately 100 acres of land apart from a residential house in the village and a plot in Kurukshetra City. However, the plaintiffs have failed to disclose as to what has happened to the remaining land as property in dispute in the present case is only 11 acres. Once the plaintiffs are claiming that the property is ancestral coparcenary property, it was incumbent on the plaintiffs to disclose that how much was the total holdings of their ancestors.

Keeping in view the aforesaid facts, there is no ground to interfere. Hence, the appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

04.02.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No