

RSA-1077-2016 (O&M)

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

**RSA-1077-2016 (O&M)
Date of decision : 08.03.2019**

Om Parkash

... Appellant

Versus

Surinderpal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vishal Aggarwal, Advocate for
Mr. Bhupinder Ghai, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the concurrent findings of fact, whereby the appellant-plaintiff has not been successful in seeking declaration to be owner in possession of half share of the plot/taur, measuring 6 marlas situated in *lal lakeer* of Village Kandhala Jattan, Tehsil Dasuya and District Hoshiarpur, being ancestral/coparcenary by challenging the sale deed dated 15.06.2007 executed in favour of defendant No.2, being null, void and illegal.

It was alleged that the aforementioned property was inherited by Milkhi Ram, father of the plaintiff, from his great grandfather i.e. Ditu. On his demise, it was succeeded by Ram Parkash and after death of Ram Parkash by Milkhi Ram. On demise of Milkhi Ram, the plaintiff and defendant No.1, being sons, acquired the right in the aforementioned property, but the defendants without any authority sold the land, vide impugned sale deed dated 15.06.2007, by breaching the trust repose upon

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him, as the power of attorney dated 26.09.2007 was for the management of the property.

The defendants opposed the suit and stated in para No.4 of preliminary objection of the written statement, as under:-

4. That the plaintiff has not come to the court with clean hands and have suppressed the real facts from this Hon'ble Court, knowingly and willfully with mala fide intention, as such the plaintiff is not entitled to any relief as claimed in the suit. The real facts are that the plaintiff and defendant and their two sisters namely Bimla Devi and Kailash Kaur had inherited two properties from their father namely Milkhi Ram. However, an oral family settlement was arrived at between the parties, wherein both the sisters have relinquished their share in favour of both the brothers and it was decided that one property i.e. house constructed over 4 marlas situated at Village Argowal, Tehsil Dasuya will fall to the share of plaintiff and the property in dispute is situated in Village Kandhala Jattan, Tehsil Dasuya will fall in the share of defendant. Accordingly, the said family partition was duly implemented at the spot. That after the oral partition defendant was in need of money, so he sell the suit property with the consent of plaintiff and other sisters of the defendant. However, later on defendant No.2 asked the defendant No.1 to get some authenticated document in this respect and then the defendant No.1 approached the plaintiff who executed power of attorney. Accordingly the plaintiff executed a power of attorney dated 26.9.2007 and gave all powers to the defendant to deal with the same, because as per the family settlement, the same had fallen to the share of defendant. Even the plaintiff has sworn an affidavit dated 26.9.2007 duly attested by Executive Magistrate, Tanda, wherein he has mentioned that he has got no concern with the land in dispute, which has been sold by the defendant. Even the sisters have sworn similar affidavit and power of attorney

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in his respect on 24.09.07. So the plaintiff has got no right, title or concern with the suit land, and the suit is liable to be dismissed".

The plaintiff, in replication, replied as under:-

4. That para No.4 of the preliminary objection of the written statement is wrong and specifically denied. It is submitted defendant No.1 without the consent of plaintiff executed sale deed of plot/taur measuring 6mls in favour of defendant No.2 vide sale deed dated 15-6-07 and the sale deed dated 15-6-07 is illegal null and void and is liable to be set aside and is a Sham transaction because the defendant No.1 has no right to execute sale deed in favour of defendant No.2 of the plot/taur in dispute because the plot/taur in dispute is ancestral Hindu Joint Coparcenary property more over the value of the plot/taur is ₹ 4,00,000/- and the defendant Nos.1 and 2 have got registered sale deed of the plot/taur at the rate of ₹ 90,000/- and only to avoid stamp duty committed fraud with the plaintiff."

Mr. Vishal Aggarwal, learned counsel appearing on behalf of the appellant-plaintiff submitted that even if, the property was not ancestral, Milkhi Ram died intestate and therefore, both the sons had a right to the extent of half share as the sisters have already been taken care of. The defendants did not have any right to sell the property and claimed to be owner of the entire property.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, on juxtaposition of the stand in the written statement and replication, it has come on record that there were two properties, one disputed one and other at Village Argowal, which as per the oral family settlement, fallen to the share of the plaintiff. The plaintiff had not approach the Court with clean hands as the factum of the property situated

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at Argowal was not disclosed. Though in evidence, he admitted to be in possession. There is no emphatical denial with regard to the relinquishment of share by the sisters in the manner and mode, as explained above, much less, in respect of ownership of the property situated at Argowal. All these factors weighed in the mind of the Courts below while declining the relief as prayed for.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Vishal Aggarwal, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. Resultantly, the second appeal is dismissed.

08.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**