

RSA-1354-2016 (O&M)

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

**RSA-1354-2016 (O&M)
Date of decision : 13.03.2019**

Satya Devi

... Appellant

Versus

Jagiro (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Mamli, Advocates
for the appellant.

Mr. C.B. Goel, Advocate
for the respondents-caveator.

AMIT RAWAL, J. (ORAL)

CM-3784-C-2016

For the reasons stated in the application, which is supported by an affidavit, the deficiency of court fees is made good.

CM stands disposed of.

MAIN CASE

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the suit for declaration and joint possession with a consequential relief of permanent injunction, decreed by the trial Court, has been dismissed.

The plaintiff sought the aforementioned relief by challenging the relinquishment deed dated 31.07.2004 and mutation No.500, on the basis of dastbardarinama and subsequent revenue entries, by declaring joint

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owner in possession of the suit property. The plaintiff is the widow of Baryam Singh son of Sardara son of Sadhu Ram and defendant No.1 is the mother-in-law, whereas defendant No.2 father-in-law. Defendant Nos.3 to 6 are the brothers of husband of the plaintiff and defendant No.7 is the sister. Defendant No.2-Sardara Singh had inherited the property from his father Sadhu Ram, who inherited from his father Shri Siria. By giving the descriptions of the land, it was alleged that the relinquishment deed and dastbardinama could not have been entered into, much less, compromise dated 31.07.2004, in a proceeding initiated under Section 372 of the Indian Succession Act as the land was ancestral and coparcenary in nature.

The defendants opposed the suit by raising objection qua estoppel, limitation, maintainability and alleged that the land was not ancestral in nature on the date of the family settlement after distribution of the land, house and money.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether the plaintiff is entitled to a decree for declaration to the effect that the relinquishment deed (dastbardinama) dated 31.7.2004 and mutation No.5000, on the basis of the alleged dastbardinama and subsequent revenue entries are null and void, not binding on the rights of the plaintiff in any manner being ineffective, nonest one and fraudulent? OPP*
- 2. Whether the plaintiff is entitled to be declared joint owner in possession of the land in suit to the extent of 1/6th share of the total land measuring 62 bighas 10 biswas as detailed in para No.4 of the plaint along with 1/6th share in the house? OPP*
- 3. Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendants No.1 to 6 from alienating transferring the suit land in any manner as detailed in paras*

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No.4 and 5 of the plaint? OPP

- 4. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD*
- 5. Whether the suit of the plaintiff is not maintainable? OPD*
- 6. Whether the plaintiff is estopped by her own act and conduct from filing the present suit? OPD*
- 7. Whether the suit of the plaintiff is not valued for the purposes for court fee and jurisdiction? OPD*
- 8. Whether the plaintiff has concealed the true and material facts from the court? OPD*
- 9. Relief.*

The plaintiff in support of the pleadings, examined herself as PW1, Jagmal as PW2, Sheo Ram as PW3, Sat Pal as PW4 and brought on record the documents Ex.P1 to Ex.P19/T. On the other hand, the defendants examined Raj Pal as DW1 and tendered in evidence copy of compromise Ex.D1.

Mr. R.S. Mamli, learned counsel for the appellant-plaintiff submitted that the appellant-plaintiff could not have entered into compromise as she was illiterate, rustic and simpleton lady and did not know the intricacies of the law as her petition was only for grant of succession certificate qua the estate of Sardara Singh, her father-in-law, filed by the mother-in-law. The relinquishment of any share in the residential and agricultural land, by way of compromise, was an act of fraud and misrepresentation and not permissible, keeping in view the nature of the property. In other **RSA No.1641 of 2014**, the mother-in-law sought the mandatory injunction for possession of the room, by relying upon the same very compromise. The suit was dismissed by the trial Court, but the lower Appellate Court set aside the judgment and decree of the trial Court and the

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appeal bearing **RSA No.1641 of 2014** is pending before this Court.

I have heard learned counsel for the parties, appraised the paper book and also seen the records of **RSA No.1641 of 2014** and of the view that the trial Court did not adjudicate issue No.5 as no arguments were addressed by the defendants and remained oblivious of the provisions of Order 23 Rule 3-A of the Code of Civil Procedure, which reads as under:-

"3A. Bar to suit:- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

It would be apt to reproduce the para 6 and sub-para (v) of para 6 of the plaint, which read as under:-

"6. That the Dastbardarinama and mutation No.500 and the order passed by Shri V.S. Malik, the then learned District Judge, Kurukshetra, in Succession Petition No.15 of 2004 and the alleged compromise dt. 31.7.2004 placed in the aforementioned petition titled as Jagiro versus General Public and others and subsequent entries in the revenue record, are null and void, ineffective, nonest one. The defendant No.2 was the Karta of HUF. The said HUF having the land as fully detailed in para No.4 of the plaint along with the rights in the shamlat deh and as fully detailed in para No.3 of the plaint. The Joint Hindu Family had the ancestral property in the hands of defendant No.2. But the defendant No.2 secretly without the knowledge of the plaintiff got executed the Dastbardarinama and also got sanctioned the mutation, which are illegal, ineffective, nonest one and not binding on the rights of the plaintiff on the following grounds:-

(v) That the plaintiff was never been called by the defendants while creating the Dastbardarinama and getting the mutation sanctioned, whereas before executing the alleged Dastbardarinama, it was incumbent upon the defendants to

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call the plaintiff. So, the alleged compromise and alleged order passed in the petition No.15 of 2004, titled as Jagiro versus General Public and others and the proceedings in the said petition are null and void. The defendants No.1 to 6 played a fraud upon the plaintiff as well as upon the Court by concealing the true facts. The defendants No.1 to 6 got succeeded to obtain the false documents under duress and undue influence and under the threat. Otherwise, the plaintiff never entered into any compromise with Smt. Jagiro defendant No.1 and the alleged compromise is totally false and fictitious and it carries no weight in the eyes of law. Even it was beyond the jurisdiction. The Hon'ble Court of Sh. V.S. Malik the then learned District Judge, Kurukshetra, had got no jurisdiction to decide the matter under Section 372 of the Indian Succession Act nor the property in question was subject matter of the said petition. Even Section 372 of the Indian Succession Act only applies to the death and security and not to the immovable properties and any dispute regarding the immovable property can be decided by the Civil Courts not in the petition under Section 372 of the Indian Succession Act. So, the alleged compromise alleged to be affected between Jagiro and the plaintiff is merely a waste paper and it carries no weight in the eyes of law and the same does not affect the rights of the plaintiff in any manner. The alleged compromise or the alleged order passed in the petition titled Jagiro versus General Public and others, are false and the same were obtained by the defendant Jagiro under duress and undue influence. So, the same carries no weight in the eyes of law.

The plaintiff also challenged the compromise dated 31.07.2004.

The genesis of the judgment is based upon the compromise, for, the plaintiff had already relinquished her right with regard to the agricultural land and house, therefore, cannot claim the share, on the basis of the fact that her

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husband had a right by birth. The appropriate forum was to move an application for recalling of the order in **Succession Petition No.15 of 2004** titled as **“Jagiro versus General Public and others”**, passed on the basis of the compromise dated 31.07.2004. The compromise made before the Court is not only signed by the persons, but also attested by the Advocates. A statue bars the maintainability of separate suit, challenging the contents of the compromise, on the basis of the fraud and misrepresentation, otherwise, in order to prevent the repetitive filing of the suit.

In view of what has been noticed above, the judgment and decree of the lower Appellate Court cannot be said to be suffering from illegality and perversity, much less, no substantial question of law arises for determination. No ground is made out for interference. Accordingly, the present second appeal is dismissed.

13.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**