

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

RSA-4175-2013(O&M)

Date of decision:-27.5.2019

Ram Kumar and others

...Appellants

Versus

Ram Sarup Godara and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Vinod S.Bhardwaj, Advocate  
for the appellants.

Mr.Hitesh Verma, Advocate  
for respondents No.1 and 2.

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**H.S. MADAAN, J.**

Briefly stated, facts of the case are that plaintiffs Sh.Ram Kumar and others had brought a suit for declaration against defendants Ram Sarup Godara and Pawan Kumar.

As per the version of the plaintiffs, Sh.Ram Kumar, aged about 58 years – plaintiff No.1, Sh.Rameshwar – plaintiff No.2 and Ram Sarup Godara – defendant No.1 are sons, whereas Smt.Sibbi – plaintiff No.3, Smt.Ramdei – plaintiff No.4, Smt.Mewa – plaintiff No.5 and Smt.Rameshari @ Usha – plaintiff No.6 are daughters and Sh.Pawan Kumar son of Ram Sarup Godara is grandson of Sh.Goma Ram son of

Sh.Mangla Ram, resident of village Dhangar; that Sh.Goma Ram owned 124 kanals 14 marlas land as fully detailed in the plaint and in the judgment passed by the trial Court, situated at village Dhangar, Tehsil and District Fatehabad; that he was having 1/2 share in shop No.104, Anaj Mandi, Fatehabad; in addition to that he owned a tractor bearing registration No.HR22/2795. As per the version of the plaintiffs, the land in the name of Sh.Goma Ram was ancestral coparcenary property and he was holding that as *KARTA* of the family; that he was not authorized and entitled to transfer such land in any manner in favour of his son Sh.Ram Sarup Godara – defendant No.1 to the exclusion of the plaintiffs; that Sh.Goma Ram had died on 15.8.2008 with the result, the plaintiffs and defendant No.1 inherited that estate in equal shares by natural succession; that they are in possession of the suit property to the extent of their shares after death of Sh.Goma Ram; that mother of plaintiffs and defendant No.1 i.e. wife of Sh.Goma Ram had pre-deceased her husband; that a month before filing of the suit, defendant No.1 – Sh.Ram Sarup Godara tried to interfere into possession of plaintiffs over the suit property forcibly and attempted to oust them therefrom; that on inquiry having been made by plaintiffs, defendants No.1 had informed that on the basis of release deed No.3567 dated 14.2.2000, the suit property i.e. agricultural land 124 kanals 14 marlas had been inherited by him alone; thereafter the plaintiffs obtained certified copies of the record; that Sh.Ram Sarup Godara had informed the plaintiffs that Sh.Goma Ram had executed a Will No.13 dated 9.4.2007 in favour of defendant No.2, who happens to be son of defendant No.1 with regard to his share in respect of shop No.104 situated

at Anaj Mandi, Fatehabad. The plaintiffs had challenged the release deed and Will set up by the defendants as illegal, null and void. According to them the shop in question had been purchased by Sh.Goma Ram out of income derived from the ancestral coparcenary property, as such it had nature of ancestral coparcenary property; that Sh.Goma Ram had no right to execute the release deed or Will with regard to the landed property and the shop in question. The plaintiffs further challenged the mutation No.3701 dated 15.6.2006 sanctioned on the basis of release deed. As per the version of the plaintiffs Sh.Goma Ram was not in a fit state of health at the time of alleged execution of release deed and defendant No.1 taking advantage of that fact got executed the said document in his favour, which is not at all binding over the rights of the plaintiffs; that the mutation sanctioned on the basis of said document after a gap of 6 ½ years i.e. on 15.6.2006 also does not affect the rights of the plaintiffs; that the Will set up by the defendants is also not legal and valid document and was result of undue influence, misrepresentation, impersonation taking undue advantage of illness of Sh.Goma Ram being not in sound disposing mind. On refusal of the defendants not to claim rights on the basis of release deed and the Will, the plaintiffs felt aggrieved and filed the suit.

On notice, the defendants appeared and filed a joint written statement contesting the suit taking various preliminary objections and on merits defending the release deed and Will in question as legal and valid documents passing valid title to them. According to the defendants, the tractor in question has been owned and possession by defendant No.1 himself, who is registered owner of the same. Refuting the remaining

allegations in the plaint, the defendants prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether release deed dated 14.2.2000 in favour of defendant no.1 is illegal, null and void? OPP.
2. Whether plaintiff is entitled for declaration as prayed for on the grounds as alleged? OPP.
3. Whether Will dated 9.4.2007 executed in favour of the defendant no.2 is genuine? OPD.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether plaintiff has no locus standi and cause of action to file the present suit? OPD.
6. Whether the defendant No.1 is in possession of the land measuring 124 kanals 14 marlas on the basis of release deed bearing no.3567 dated 14.2.2000 executed by Goma Ram? OPD.
7. Relief.

In order to prove their case, the plaintiffs had examined Sh.Virender Kumar, Registration Clerk as PW1, Sh.Narinder Kuamr, Registration Clerk as PW2, Sh.Rameshwar, Clerk as PW3, Sh.Ram Sarup, Mandi Supervisor as PW4, Sh.Ram Kumar (plaintiff No.1) as defendant No.5 and Sh.Ruli Ram as PW6.

On the other hand, the defendants had examined Sh.Rameshwar Dass, Clerk as DW1, Sh.Ved Parkash as DW2, Sh.Yogesh Kumar as DW3, Sh.Ganpat Ram, Lambardar as DW4, Sh.Atma Ram as DW5, Sh.Sunil Kumar as DW6, whereas Sh.Ram Sarup – defendant

No.1) got his statement recorded as DW7.

After hearing learned counsel for the parties, the trial Court decided issues No.1, 2, 3 and 6 against the plaintiffs and in favour of the defendants, issue No.4 in favour of defendants and against the plaintiffs and issue No.5 against the defendants and in favour of the plaintiffs. Resultantly, suit of the plaintiffs was dismissed. This was so done vide judgment and decree dated 16.9.2010.

Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Fatehabad which was assigned to Additional District Judge, Fatehabad, who vide judgment and decree dated 30.5.2013 dismissed the same.

Feeling aggrieved by the judgments and decrees passed by the Courts below, the plaintiffs have knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside.

On getting notice of regular second appeal, the contesting respondents No.1 and 2 have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

The trial Court has given reasoning for the dismissal of the suit, which is contained in para Nos.17 and 18, which for ready reference are reproduced as under:

*17. After hearing both the sides, I find force in the submissions of learned counsel for the defendants. It has*

*come in evidence of the plaintiff Ram Kumar himself that his father Goma Ram has sold the Tractor 11 years back to defendant no.1 i.e. some where in the year 1999, when the tractor has been admitted to be sold to defendant no.1, then the question does not arise that the Tractor was the property of Goma Ram. From Ex.D10 mutation it is revealed that Goma Ram partitioned his property into four shares and plaintiffs No.1 & 2 and defendant No.1 were given 1/4<sup>th</sup> share each whereas remaining 1/4<sup>th</sup> share was kept by Goma Ram as his own property. There is nothing on the file to show that the property which Goma Ram had alienated by means of Ex.P1 and Will Ex.D5 was property other than which he kept for his personal use after giving due share to his sons. There is nothing on the file of the sort of evidence that shop no.104 was purchased by Goma Ram from joint family funds and thus it was ancestral property. Therefore, plaintiffs have not been able to prove their assertion in the court of law and have been able to show that the release deed no.3567 dated 14.1.2000 executed by Goma Ram in favour of the defendant no.1 is illegal, null and void, rather from the testimony adduced on file it be comes amply clear that Goma Ram executed a valid will in favour of defendant no.2 qua his shop no.104 Anaj Mandi, Fatehabad in which he was having 1/2<sup>nd</sup> share. No evidence has been adduced on file by the plaintiffs as to on what basis they are claiming possession over 124*

*kanals 14 marlas agricultural land whereas according to the case of the plaintiff the mutation no.3701 on the basis of release deed has already been sanctioned in favour of the defendant no.1 on 15.6.2006. It has also come in evidence of the plaintiffs that Ram Kumar is residing separately from his father from the year 2000 whereas from Ex.D10 it is revealed that Goma has already given due share to his sons in the year 1970 in the agricultural land. The share was given on the basis of declaratory suit in which order was passed by the Court of Shri O.P. Gupta, Sub Judge, Second Class on 24.1.1970. Therefore, issues no.1,2,3 and 6 are decided against the plaintiffs and in favour of the defendants.*

**Issue No.4**

*18. Learned counsel for the defendants has argued that plaintiffs have filed simply suit for declaration without seeking possession. In the written statement it has come on the file that the shop no.104 situated in Anaj Mandi, Fatehabad has been rented out to M/s Jyoti and Company Commission Agents, Fatehabad and there is no rebuttal to this stand that plaintiffs are also receiving rent of this shop or in any way are in possession of it. There is no evidence on the file to show that the plaintiffs are in possession of the agricultural land or atleast how they are claiming its possession, when the mutation no.3701 has already been sanctioned in favour of the defendant no.1 on 15.6.06. In*

*such a circumstances in my considered opinion simple suit for declaration without seeking relief of possession is not maintainable. Accordingly, it is held that suit in present form is not maintainable Hence, this issue is decided in favour of the defendants and against the plaintiffs.*

I find such reasoning to be proper, satisfactory, plausible based upon the correct interpretation of legal and factual position. Similarly, the learned Additional District Judge, Fatehabad on due application of mind has drawn the conclusion that the suit deserves to be dismissed accepting the version of the defendants. Learned Additional District Judge, Fatehabad has observed that the plaintiffs had failed to establish on record that the land in question happened to be ancestral coparcenary property; that the plaintiffs had simply relied upon document mutation No.556 Ex.P6/A showing that after the death of Sh.Mangla, his estate comprised in khasra no.525 to 527 was mutated in favour of Sh.Kemara, Sh.Goma Ram and Sh.Het Ram in equal shares but in the mutation, there was no mention of killa number and extent of land, which was inherited by Sh.Goma Ram from his father Sh.Mangla; furthermore no document is available on record, which could connect the suit property with mutation No.556; that the excerpts with regard to the land in question were not got prepared by the plaintiffs to prove the nature of land to be ancestral. The second reason given by learned Additional District Judge, Fatehabad is that as per own case of the plaintiffs/appellants vide Civil Court judgment and decree dated 24.1.1970, Sh.Goma Ram had already

given 3/4 share out of the land measuring 198 kanals 12 marlas to his three sons retaining only 1/4<sup>th</sup> share with him, which fact is corroborated from mutation No.1830 Ex.D10 and from the perusal of mutation No.620 Ex.D11, it comes out that as per the sale deed dated 3.5.1958 some land was purchased by Sh.Goma Ram from Sh.Purkha; that mutation No.664 Ex.D12 shows that as per the order of revenue officer dated 26.10.1957, the land measuring 97 kanals 11 marlas was mutated in favour of Sh.Goma Ram, in that way, the plaintiffs had already been given their share in the ancestral property, if any and the remaining property became the self acquired property of Sh.Goma Ram after its partition/division in the family settlement; that the plaintiffs had neither pleaded nor proved that the suit property was purchased from a joint Hindu family fund and mere admission of defendants would not relieve the plaintiffs from their duty to prove the nature of suit property to be ancestral. The judgment in that regard *Matu Versus Kartar Singh, 2004(2), Punjab Law Reporter 571* has been relied upon. Under the circumstances Sh.Goma Ram being exclusive owner of the property could transfer the same and no fault can be found with the release deed executed by him in favour of his son defendant No.1 – Sh.Ram Sarup Godara. The plaintiffs were unable to prove that it was not executed by Sh.Goma Ram but by some ancestor. Sh.Goma Ram had remained alive after execution of release deed Ex.D8 but the plaintiffs had not challenged its validity. Similarly with regard to Will dated 9.4.2007 Ex.D5, the defendants by examining both the attesting witnesses of the Will DW4 Ganpat and DW5 Atma Ram had duly proved the execution of Will as required under Section 68 of the

Indian Evidence Act, whereas the plaintiffs could not point out any suspicious circumstances surrounding the Will. There was nothing to show that the testator was not in sound disposing mind at the relevant time, rather registration of Will goes a long in any suspicious circumstance.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

27.5.2019  
Brij

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**