

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA- 5125 of 2015(O&M)

Date of decision: July 2nd, 2019

Sujata and others

---Appellants

vs.

Hari Singh and others

---Respondents

Coram: HON'BLE MRS. JUSTICE REKHA MITTAL

Present Mr. K.K.Gupta, Advocate
for the appellants

None for the respondents

Rekha Mittral, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration with consequential relief of possession and permanent injunction in respect of properties, detailed in para 1(a) to (d) (unnumbered) of the plaint was dismissed by the trial court vide judgment and decree dated 23.4.2014 that came to be affirmed in appeal by the Additional District Judge, Rewari.

There is no dispute that appellants-plaintiffs are the class-I heirs of Naresh (since deceased) son of Hari Singh defendant No. 1 and said Naresh was the brother of Suresh Kumar defendant No. 2. They have claimed 1/3rd share in agricultural land, detailed in paras 1(a) and 1(b) of the plaint on the premise that the same is ancestral property and Naresh became entitle to 1/3rd share in suit land being one of the

coparceners with defendants No. 1 and 2. It is pleaded that Naresh alongwith defendants No. 1 and 2 was a coparcener in joint Hindu family and suit land was recorded in the name of defendant No. 1 being *karta* of the joint Hindu family. They have challenged sale deed No. 1817 dated 6.2.2008 and mutation No. 544 sanctioned on 26.2.2008 in respect of alienation of land mentioned in para 1(b) in favour of defendants No. 3 and 4 on the premise that the same is for fake consideration, illegal, void, without any authority and not binding upon rights of the plaintiffs. The ancestral land could not be alienated without consent of all coparceners.

Defendants No. 1 and 2 filed joint written statement and contested claim of the appellants-plaintiffs that suit land is ancestral or joint Hindu family property or entitlement of the appellants qua share in the said land. It is averred that in the year 1999, plaintiff No. 1 settled everything with defendant No. 1 and in token of settlement, she took Rs. 2 lakhs on 13.12.1999 and executed a receipt in favour of defendant No. 1 in presence of her son Shubham and relinquished all her claims in the property. Plaintiff no. 1 did not have cordial relations with Naresh and he was got imprisoned by her in the years 1988 and 1990. It is pleaded that defendant No. 1 is the sole owner of land mentioned in para 1(a) of the plaint and before sale, he was absolute owner of land mentioned in para 1(b) and now defendants No. 2 and 3 (sic) are absolute owners on the basis of sale deed dated 6.2.2008. Late Sh. Rao Shadi Ram father of defendant No. 1 was great freedom

fighter and he suggested defendant No. 1 to establish a welfare society.

Defendant No. 1 established society named 'Hariom Shiksha Samiti, Kapriwas' to run a school in the name of Hari Om Public School at Kapriwas. The society is registered with Director Firms and Societies Chandigarh and the school is recognized by the Director of Secondary Education Chandigarh, Haryana. The answering defendant No. 1 has given 30 kanal 16 marlas of land to the society/school out of 106 kanal 13 marlas of land. Defendant No. 1 had spent a sum of Rs. 3 lakhs on his heart operation, medication, blood transfusion and care etc. he purchased Tata Indica car for Rs. 2.5 lakhs. Being Chairman of the school, defendant No. 1 purchased Mahindra School Bus for about Rs. 8 lakhs on 22.11.2006. Under pressure of repayment of loan from various sources and the school to flourish, defendant No. 1 had to dispose of land measuring 27 kanal 4 marlas.

Defendant Nos. 1 and 2 denied the plea of suit land being ancestral coparcenary property with the averment that defendant No. 1 is the sole owner of the land and not *karta* of the joint family. Defendant No. 1 got the land during consolidation of holdings in the year 1961-62. After marriage of plaintiff No. 1 with Naresh, she always pressed for money so that she could stay at Gurgaon after buying a plot/house. Naresh was forced to indulge in drinking which caused his death and plaintiff No. 1 is responsible for the same. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

Defendants No. 3 and 4 filed their separate written statement raising preliminary objections pertaining to locus standi; maintainability of the suit in present form; suit being without cause of action against answering defendants and plaintiffs have not come to the court with clean hands. It is averred that answering defendants purchased the land mentioned in para 1(b) of the plaint for a valuable consideration of Rs. 51,85,000/- and they are bona fide purchasers.

The appellants-plaintiffs filed replication to written statements filed by both sets of defendants and re-assert their stand taken in the plaint.

The trial court framed issues, reproduced in para 5 of the judgment thereof. The parties were permitted to adduce evidence in support of their respective contentions, detailed in para 6 and 7 of the judgment of trial court. Having heard counsel for the parties in the light of materials on record, the trial court accepted claim of the appellants-plaintiffs that land detailed in para Nos, 1(a) and 1(b) of the plaint is ancestral coparcenary property in the hands of defendant No. 1 as the same was inherited by him from his father and his father inherited the same from his father, by relying upon the excerpt prepared by Sadar Kanungo DC office, Rewari namely Chander Bhan examined as PW1 whose testimony was corroborated by Hari Ram retired Assistant, DC office, Rewari PW2. However, the Court rejected claim of the plaintiffs against alienation of land vide sale deed dated 6.2.2008 executed by defendant No. 1 in favour of defendants No. 3 and 4 by

holding that the sale is for legal necessity and benefit of estate, therefore, valid and legal in the eye of law. So far as the properties mentioned in paras 1(c) and 1(d), it was held that the same are not ancestral coparcenary properties in the hands of defendant No. 1 rather the same are personal self acquired property of defendant Hari Singh.

The first Appellate Court affirmed findings of the trial court while dismissing the appeal preferred by unsuccessful plaintiffs-appellants.

Counsel for the appellants would argue that findings of the courts with regard to land detailed in paras 1(a) and (b) to be ancestral coparcenary property in the hands of defendant No.1 have attained finality as defendants before the trial court neither filed an appeal to challenge those findings before the first Appellate Court nor they filed cross objections in appeal preferred by the appellants-plaintiffs. It is further argued that findings of the courts that sale in respect of land detailed in para 1(b) is for legal necessity or benefit of estate are not based upon correct appreciation of materials on record and vitiated by perversity, thus liable to be set aside. It is further argued that respondents failed to adduce sufficient much less cogent and convincing evidence to prove legal necessity or benefit of estate. They have failed to produce evidence with regard to any amount out of sale proceeds being appropriated for repayment of loan or incurring expenses on medical treatment of defendant No. 1.

Respondents failed to cause appearance despite service.

I have heard counsel for the appellants, perused the paper book and records.

The appellants have staked their claim to suit property, detailed in paras 1(a) to 1(d) of the plaint primarily on the ground that the same is ancestral coparcenary property in the hands of defendant No. 1. There is also reference to joint Hindu family consisting of defendant No. 1 and his two sons namely Naresh and Suresh Kumar. The courts have consistently held that agricultural land detailed in paras 1(a) and 1(b) is ancestral coparcenary property inherited by defendant No. 1 from his forefathers. However, two houses, detailed in para 1(c) and 1(d) were held to be self acquired property of defendant No. 1 as the appellants failed to substantiate their plea that houses in village Kapriwas are ancestral coparcenary property.

Counsel for the appellants has not made any submissions to challenge concurrent findings with regard to properties/houses, detailed in paras 1(c) and 1(d) to be non ancestral or self acquired property of defendant No. 1. Since properties mentioned in paras 1(c) and 1(d) are self acquired properties of Hari Singh defendant No. 1, plaintiffs being the widow and children of predeceased son of Hari Singh cannot claim right in the said properties so long as Hari Singh is alive. As such, findings of the courts with regard to properties detailed in para 1(c) and 1(d) are liable to be affirmed and ordered accordingly.

The agricultural land detailed in paras 1(a) and (b) is held to be ancestral coparcenary property as the same was inherited by Hari

Singh from his forefathers. Naresh being one of the sons of Hari Singh became a coparcener in the said ancestral coparcenary property. Hari Singh had two sons namely Naresh (since deceased) and Suresh Kumar defendant No. 2 and a married daughter. Naresh died in the year 2005 but exact date of his death is not forthcoming.

Section 6 of the Hindu Succession Act, 1956 (in short “the Act”) was amended in the year 2005 and in view of the amendment, daughter(s) also becomes a coparcener and has same right in the coparcenary property as she would have had if she has been a son. In the case at hand, no partition/alienation of coparcenary property was made prior to 20.12.2004 and sale deed in respect of land measuring 27 kanal 4 marlas, detailed in para 1(b) was executed on 6.2.2008.

The trial court, in concluding para under issue No. 3, declined to determine shares of plaintiffs because children of daughter of defendant No. 1 also have share in the suit property and the plaintiffs failed to implead them as a party. The court has failed to consider that children of daughter of defendant No. 1 shall be entitle to the same share which their mother was entitle to. In the given circumstances, Hari Singh, his two sons namely Naresh and Suresh Kumar and daughter or her successor(s) in interest if she was not alive on the day Naresh died would become entitle to 1/4th share each, in land detailed in paras 1(a) and 1(b) of the plaint, on the basis of notional partition at the time of death of Naresh. Accordingly, Naresh became entitle to 1/4th share in land measuring 106 kanal 13 marlas and his share shall be

inherited by his class-I heirs, in accordance with the provisions of the Act. It appears that mother of Naresh was alive at the time of his death, therefore, she would also become entitle to a share along with the appellants in the land that came to share of Naresh on his death.

The courts have rejected challenge to the sale deed dated 6.2.2008 admittedly executed by defendant No. 1 in favour of defendants No. 3 and 4 on the premise that sale was for legal necessity and benefit of estate. Both the courts have intermingled and confused the concept of joint Hindu family and ancestral coparcenary property, may be, for the reason that even counsel for the plaintiffs drafted the plaint in a manner intermingling two issues. The question of sale for benefit of estate or legal necessity would have arisen if the suit land is held to be joint Hindu family property of which Hari Singh was the *karta*. There is no such finding recorded by the courts that agriculture land detailed in paras 1(a) and 1(b) of the plaint was joint Hindu family property of which Hari Singh, his two sons and their families were a part. In the given scenario, the entire effort of the courts to decide question of legal necessity or benefit of estate is the result of their failure to understand that suit land has been held to be ancestral coparcenary property in which Naresh was entitle to a share being one of the coparceners, to be allotted on the basis of notional partition at the time of his death. In this view of the matter, findings of the courts with regard to sale being for legal necessity or benefit of estate are of no consequence to determine entitlement of the appellants in the entire

agricultural land measuring 106 kanal 13 marlas, detailed in paras 1(a) and 1(b) of the plaint. Taking into consideration that the appellants became entitle to succeed to $1/4^{\text{th}}$ share of Naresh along with other class I heirs of Naresh (for example his mother), sale of land measuring 27 kanal 4 marlas made by Sh. Hari Singh would be adjusted out of his share to the extent of $1/4^{\text{th}}$ in total land measuring 106 kanal 13 marlas. In case Hari Singh is found to have alienated land more than his share to the extent of $1/4^{\text{th}}$, purchasers from Hari Singh would not be entitle to take benefit thereof in view of settled position in law that no one can confer a better title than he himself has. In this view of the matter, the appellants-plaintiffs along with other class-I heir(s) of Naresh are declared to be co-owners in joint possession to the extent of $1/4^{\text{th}}$ share of Naresh, in land measuring 106 kanal 13 marlas.

In view of what has been discussed hereinbefore, the appeal is partly allowed. Judgments and decrees passed by the courts are modified in the aforesaid terms. Suit filed by the plaintiffs/appellants is partly decreed to the effect that the appellants are co-owners in joint possession along with other class-I heir(s) of Naresh to the extent of $1/4^{\text{th}}$ share of Naresh, in land measuring 106 kanal 13 marlas.

(Rekha Mittal)
Judge

July 2nd, 2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No

