

In the High Court of Punjab and Haryana at Chandigarh

RSA- 2729 of 2014 (O&M)
Date of Decision: 18.12.2019

Mahender Kumar and others

---Appellants

versus

Bisram and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.S.Hooda, Advocate
for the appellants

None for the caveator

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for declaration and possession as a consequential relief, filed by the appellants-plaintiffs was dismissed by the trial court, vide judgment and decree dated 24.9.2012 that came to be affirmed in appeal by the Additional District Judge, Palwal.

The appellants-plaintiffs are the sons of Sh. Hari Kishan, respondent No. 4. Mukesh-proforma respondent is another son of said Hari Kishan. Land measuring 9 kanal 7 marlas, detailed in para 1 (unnumbered) of the judgment of trial court, is the subject matter of suit, situated in village Rehrana, Tehsil and District Palwal. The appellants-plaintiffs challenged two sale deeds executed by Sh. Hari Kishan in favour of defendants No. 1 to 3 in respect of his share in the suit land primarily on the ground that suit land was ancestral, joint Hindu family coparcenary property

in the hands of Sh. Hari Kishan and he had sold the same without consideration and legal necessity. They have also raised the plea that Hari Kishan sold the suit land without consent of Ms. Champa, mother of the plaintiffs-appellants, in view of compromise effected in the suit filed by Ms. Champa against Sh. Hari Kishan.

The trial court negated plea of the appellants-plaintiffs that suit property was ancestral coparcenary property in the hands of Sh. Hari Kishan. It was further held that even if it is accepted that suit property was coparcenary property, Hari Kishan had sold the same for benefit of estate and better management. As has been noticed hereinbefore, the Appellate Court dismissed the appeal while affirming findings of the trial court.

I have heard counsel for the appellants, perused the judgments impugned and copies of documents supplied during the course of hearing.

Apart from the fact that there is delay of 166 days in filing the appeal, the appeal sans merit and deserves to be dismissed.

Perusal of the impugned judgments and copies of documents makes it evident that primary contention of the appellants is that suit land was joint Hindu family ancestral coparcenary property in the hands of Sh. Hari Kishan, therefore, he was not entitle to sell the same without legal necessity.

The question for consideration is, whether appellants have been able to establish that suit land was either joint Hindu family or ancestral coparcenary property in which the appellants being sons of Hari Kishan had a right either by way of birth or being members of joint Hindu family. The answer, at the outset, appears to be in the negative.

Counsel for the appellants, in response to a query, would

inform that suit land was inherited by Sh. Hari Kishan and his siblings on the death of their father Mangtu and in this regard mutation was sanctioned in June 2000. Perusal of copy of mutation would reveal that Sh. Mangtu died on 19.1.2000 and mutation in favour of his sons and daughters was sanctioned on the basis of natural succession. Since Sh. Mangtu died after commencement of the Hindu Succession Act, 1956 and his estate was inherited by his class-I heirs, in view of provisions of the said Act, land inherited by Sh. Hari Kishan became his personal property with a right to deal with the property in a manner a rightful owner has liberty in law. Counsel has failed to point out any materials on record that Hari Kishan constituted a joint Hindu family with the appellants or suit property was joint Hindu family. Analyzed from any angle, the appellants have failed to establish their plea that either the suit land was joint Hindu family or ancestral coparcenary property in the hands of Sh. Hari Kishan, therefore, their contention that the same could not be alienated except for legal necessity or benefit of estate, is unfounded.

The courts have recorded consistent findings that suit land was sold by Hari Kishan for legal necessity. Counsel has failed to advance any meaningful argument to successfully assail concurrent findings of fact recorded by the courts. In this view of the matter, the appellants can not succeed in the appeal by raising submissions on the aforesaid two aspects of the matter.

This brings the court to another contention of the appellants that Hari Kishan could not alienate the suit land without consent of his wife Ms. Champa. They have sought to rely upon compromise effected between Champa and Hari Kishan in the litigation initiated by Ms. Champa.

Indisputably, no decree was passed in favour of Ms. Champa on the basis of said compromise. On the contrary, Chamba withdrew the suit on the basis of compromise dated 22.3.2002. Compromise is an agreement effected between the parties. Perusal of compromise would reveal that the same is without consideration. As per settled position in law, an agreement without consideration is void ab initio. This apart, an owner cannot be denied his right to deal with his property except if a restriction is imposed under a statute or legal agreement. In this view of the matter, the appellants can not derive any advantage to their contention from any such compromise between Champa and Hari Kishan. Even otherwise, the appellants are not claiming any right in the suit property through their mother Ms. Champa and as such, cannot derive any advantage of said compromise between Champa and Hari Kishan. In this view of the matter, I do not find an error much less perversity in concurrent findings recorded by the courts.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

18.12.2019

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