

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 4311 of 2014 (O&M)

Date of decision : July 04, 2019

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Deep Rana and another

.....Appellants

Versus

Vijay Kumar and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Arun Takhi, Advocate for the appellant.

Mr. Arun Jindal, Advocate for respondents no. 1 to 3.

Mr. Tarun Vir Singh Lehal, Advocate for respondents no. 5 to 8.

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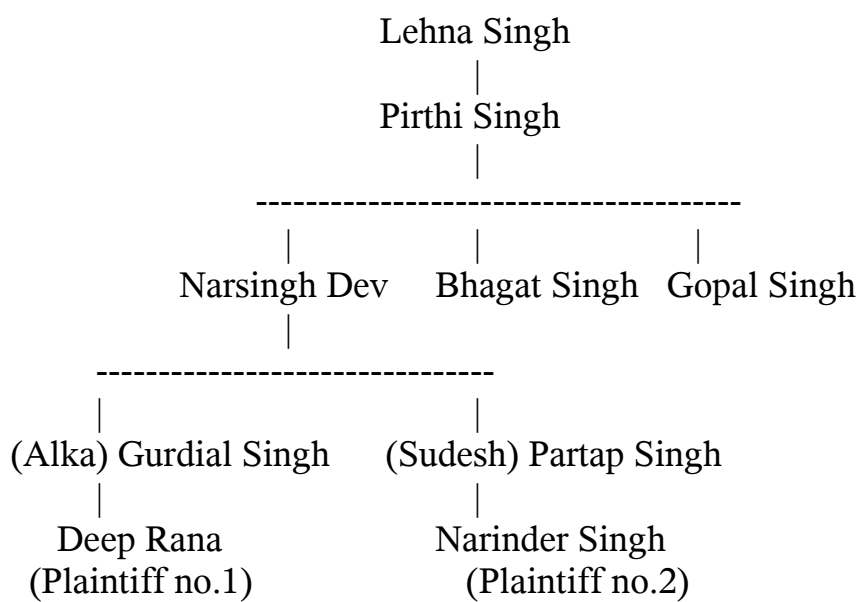
RITU BAHRI, J.

The appellants-plaintiffs have come up in the present appeal against the judgment of the trial Court dated 30.5.2012 and lower appellate Court dated 2.4.2014. Vide the judgment of the trial Court, suit of the plaintiffs for declaration to the effect that land (as detailed in the plaint) is a joint Hindu family coparcenary property consisting of plaintiffs and defendant no.4, was dismissed. Further relief of permanent injunction with

alternative prayer for joint possession has also been dismissed. Vide the

judgment of the appellate Court, the appeal against the judgment and decree of the trial Court dated 30.5.2012 was also dismissed.

Briefly stated, the facts of the case are that 41 kanals 05 marlas of land (fully detailed in the head note of the plaint) is ancestral joint Hindu family coparcenary property consisting of plaintiffs and defendant no.4. The pedigree table of the family is as under:-



Plaintiff no.1 is son of Gurdial Singh and plaintiff no.2 is the son of Partap Singh and their case is that the joint hindu family coparcenary property owned by Gurdial Singh and Partap Singh has been sold without any legal necessity to defendants no. 1 to 3 and defendants no. 5 to 8.

On notice of the suit, the case set up by defendant no.4 is that the suit property was not joint Hindu family coparcenary property. This property was inherited by Gurdial Singh and Partap Singh from their vendors on the basis of Will dated 17.8.1985 and mutation no.2214 of his inheritance was sanctioned on 25.09.1996. It was the self acquired property of Narsingh Dev and he was the exclusive owner of the property

which he gave to Gurdial Singh and Partap Singh by way of Will and the sale deeds made by Gurdial Singh and Partap Singh are legal and binding.

Separate written statements taking similar stand were filed by defendants no. 5 to 7.

Following issues were framed by the trial Court :

- 1) Whether property in dispute is ancestral, joint Hindu Family coparcenary property, consisting of plaintiffs and defendant no.4 and plaintiffs have got 1/3 share in it? OPP
- 2) Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD-1 to 3 & 5 to 7
- 3) Whether plaint is liable to be rejected in view of order dated 12.4.2007 by this Court? OPD-1 to 3 & 5 to 7
- 4) Whether single suit against all defendants is not maintainable as alleged? OPD-1 to 3 & 5 to 7.
- 5) Whether plaintiffs are estopped from filing this suit by their acts, conduct, admissions and acquiescence? OPD-1 to 3 & 5 to 7
- 6) Whether plaintiffs have no locus standi to file present suit? OPD-1 to 3 & 5 to 7
- 7) Whether suit is within limitation? OPD-1 to 3 & 5 to 7
- 8) Whether suit is bad for mis-joinder and non-joinder of necessary and proper parties? OPD-1 to 3 & 5 to 7
- 9) Whether suit is collusive with and at the instance of defendant no.4? OPD-1 to 3 & 5 to 7.

10) If property in dispute is proved to be ancestral, joint Hindu Family Coparcenary property, whether sale made by defendant no.4 to defendants no. 1 to 3 was for legal necessity? OPD -1 to 3 & 5 to 7.

11) Relief

After hearing counsel for the parties and going through the evidence, the trial Court gave a finding that the oldest jamabandi proved on record is for the years 1968-69 and as per this jamabandi, Narsingh Dev was the owner of the property in question. But from this jamabandi alone, it cannot be said that property in the hands of Narsingh Dev was ancestral. Moreover, no evidence was led to show that the property in the hands of Narsingh Dev was ancestral. No evidence to this effect was led by the plaintiff by examining Kanungo. Thus without establishing the nature of property in the hands of Narsingh Dev, nature of property cannot be concluded to be joint Hindu family coparcenary property. In this backdrop, it was held that the property in the hands of Gurdial Singh and Partap Singh was not ancestral and the sales made by them were legal. The trial Court referred to a judgment in the Court of ***Harnek Singh vs. Sukhdev Singh 2001 (4) RCR (Civil) 411***, wherein it was observed that if the immediate predecessor did not acquire the property in inheritance but by way of devolution in survivor, the further descendants of such recipient cannot claim such property as ancestral property and the Will executed by their predecessor cannot be held incompetent for alienation of such property in

his hands.

The finding on issue no.1 has been affirmed by the lower Appellate Court in appeal. Both the Courts have further given a concurrent finding that even if the property was joint Hindu family coparcenary property, father of the plaintiffs sold their share for legal necessity. The plaintiffs did not lead any evidence to show that Gurdial Singh and Partap Singh were not having sound disposing mind. They had no vices as their aunts and cousins used to reside with them. The sale proceeds of the property have not been misused and families were residing together. In absence of any vices and family being closely knit residing together, subsequent purchaser who purchased property for consideration cannot be penalized.

Finally, the reference has been made to a civil suit EX.D-14 written statement of which is Ex.D-21. In this suit, plaintiffs were also a party but no arguments or plea were raised with regard to nature of the property being ancestral. Plaintiff Deep Rana in the witness box had clearly admitted that Nath Ram had filed civil suit against them. In that suit, the plaintiff along with his mother and sister and Partap Singh were party and if at the time of attempt by Nath Ram to execute the sale deed, the plea of nature of property being coparcenary property was not taken, after such a considerable time, plaintiff cannot be allowed to come and agitate the matter and thereby uprooting the rights of defendants.

Both the Courts have further observed another fact that plaintiffs have challenged the selective sale deeds. Narsingh Dev was

having land at villages Rurki Kalan and Garhi Mansowal. The plaintiffs did not bother to enquire from his grandfather with respect to the land situated at Village Garhi Mansowal but proceeded to challenge the sale deeds with respect to villages Rurki Kalan. Moreover, the defendants being bona fide purchasers for consideration were not obliged to go to the family members of the deceased with respect to the nature of the properties. The rights of the bona fide purchasers cannot be disturbed as held by this Court in ***Anup Singh vs. Smt. Bachni alias Bachan Kaur 1996(2) Civil Court Cases 441***, wherein bona fide purchaser after going through the mutations and verification of title from the record had purchased agricultural land. The vendor had been duly recorded as owner on the basis of a registered will and mutation sanctioned in his favour after contest by other persons claiming on the basis of unregistered will. It was held that vendee cannot be said to have not taken reasonable care only because he did not ask all the legal heirs of the deceased earlier holder of the property. Vendee was a bona fide purchaser for consideration from a person competent to transfer and holding a valid title in good faith and acquired good title. If the true owner permits another person to hold himself out as real owner vendee of property after taking reasonable care to ascertain the title and power to transfer such title acquires good title against the true owner.

The lower appellate Court while dismissing the appeal has further observed that from order of mutation Ex. DK, it is obvious that Gurdial Singh and Partap Singh had become owners of estate of Narsingh Dev by virtue of a Will dated 17.8.1985. There is no challenge to the Will

executed by Narsingh Dev and in this backdrop, the property acquired by virtue of Will has attained finalty and Gurdial Singh and Partap Singh were entitled to dispose of their property. In the suit, there is no challenge to the sale deeds executed by Gurdial Singh and Partap Singh in favour of contesting defendants.

After perusing the judgments passed by the trial Court and lower appellate Court, this Court is of the opinion that no case is made out by interfering with respect to the nature of property. The property in the hands of Gurdial Singh and Partap Singh by virtue of the will acquired the status of self-acquired property. No evidence has been led to show that the property in the hands of Narsingh Dev was ancestral property. Right of the bona fide purchasers has rightly been protected by both the Courts keeping in view that they were not bound to make any enquiries with regard to the nature of the property.

No substantial Question of law arises for consideration in the present regular second appeal hence the same is dismissed.

July 04, 2019
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No