

RSA No. 1041 of 2018 (O&M)

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

**RSA No. 1041 of 2018 (O&M)
Date of decision: 24.10.2019**

Balwinder Singh

... Appellant

Versus

Iqbal Singh (since deceased) through LR's and others ... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Raman Mohinder Sharma, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 21.9.2013, and as even the appeal preferred against the said decree failed and was dismissed on 20.7.2017, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a declaration that he was owner in possession as co-sharer over a land measuring 29 kanals 18 marlas, comprised in specific numbers as set out in the cause title of the plaint, situated at village Sunam-B, and transfer deed dated 15.3.2005, executed by defendant No.1 in favour of defendant No.2 was illegal, null and void, being without authority and consideration. Likewise, sale deed dated 16.1.2008, alleged to be executed by defendant No.1 in favour of Kartar Singh and Sukhpal Singh, (defendant Nos. 3 and 4), qua a land measuring 8 kanals 7 marlas, situated at village Sunam-B, was also illegal.

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In brief, the case set out by the plaintiff was that defendant No.1 (Iqbal Singh son of Kesar Singh) happened to be his father and defendant No.2 was his brother. The suit land was ancestral, coparcenary and joint Hindu family property and defendant No.1 was Karta of the family. Therefore, the plaintiff, being a coparcener, had a right therein by birth. And, in the given situation, transfer deed dated 15.3.2005, executed by defendant No.1 in favour of defendant No.2, and sale deed dated 16.1.2008, executed by him in favour of his grandsons or sons of defendant No.2, were liable to be set aside.

In the joint written statement filed by the defendants, it was denied that plaintiff was a co-sharer in the suit land. Further, defendant No.1 was owner in possession of the suit land, and therefore, was fully authorised to alienate and deal with the suit property in the manner he liked. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that, for plaintiff to succeed, he was required to prove that suit land was ancestral and coparcenary in nature. The evidence on record showed that plaintiff failed to produce the necessary evidence to prove the nature of the suit land being coparcenary. In the matter at hands, plaintiff never brought on record any excerpts prepared by Kanungo or Patwari to meet the requirements of law to claim the suit property as ancestral and coparcenary. In fact, the evidence on record, i.e. jamabandi for the year 1974-75, revealed that previously, Smt. Ishar Kaur wife of Ganda Singh was owner of the suit land from whom defendant No.1 had purchased the same. Therefore, suit land in the hands of Iqbal Singh was his self acquired property. Nothing was brought on record to show that

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Iqbal Singh had acquired the suit land by way of inheritance.

There was yet another aspect of the matter, for, plaintiff (Balwinder Singh) conceded in his cross-examination that he had separated from his father (defendant No.1) 30 years ago, and defendant No.1 was living with his brother (defendant No.2). Further, his father (defendant No.1) had suffered a decree vide which he transferred six killas of land in favour of the plaintiff. Perusal of the judgment for the year 1990-91 showed that a family settlement was arrived at between plaintiff, defendants No.1 and 2. Therefore, once the plaintiff had failed to prove that suit land in the hands of Iqbal Singh was coparcenary and ancestral, the only and the inevitable conclusion that could be reached: Iqbal Singh, being an exclusive and absolute owner of the suit land, he had every right, power and authority to execute the transfer deed dated 15.3.2005 and sale deed dated 16.1.2008 in favour of the defendants. Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

October 24, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO