

RSA No. 1408 of 2018 (O&M)

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

**RSA No. 1408 of 2018 (O&M)
Date of decision: 24.9.2019**

Kaushalya Devi and others

... Appellants

Versus

Ved Parkash (now deceased) through Lrs and others ... Respondents

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

Present: Mr. Achin Gupta, Advocate
for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiffs was dismissed by the trial court, vide judgment and decree dated 3.4.2015, and as even the appeal preferred against the said decree failed and was dismissed on 20.7.2017, they are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs prayed for a declaration that property in the hands of Ved Parkash, i.e. 463/9266 share of land measuring 463 kanal 06 marla comprised in specific khasra numbers, as set out in the cause title of the plaint, situated at village Phulo Mithi, Tehsil and District, Bathinda, was ancestral property and thus the plaintiffs had a right therein by birth. Thus, defendant No.1 (Ved Parkash), had no authority to alienate the same without any legal necessity. Hence, sale deed No. 321, dated 27.5.2011, executed by defendant No.1 in favour of defendant No.2 regarding sale of 200/9266 share, which comes to 10 kanals, and also the sale deed No. 322, dated

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27.5.2011, vide which defendant No.1 had transferred 263/9266 share in favour of defendant No.2, which comes to 13 kanals 13 marlas, were illegal, null and void. For the said two sale deeds were executed even without any legal necessity, consideration and delivery of possession, those were ineffective qua the right of plaintiffs and liable to be set aside. Further, the sale deed No. 1257 dated 8.11.2011, executed by defendant No.2 in favour of defendant No.3 regarding sale of 463/9266 share, which comes to 23 kanals 3 marlas, was also liable to be set aside. A consequential relief for injunction was also prayed for restraining defendants No.2 and 3 from obtaining forcible possession from the plaintiffs.

In brief, the case of the plaintiffs has been that plaintiff No.1 happened to be the wife of Ved Prakash (defendant No.1), while plaintiffs No. 2, 5 and 6, were his daughters and plaintiffs No. 3 and 4 were his sons. Marriage of plaintiff No.4 (Janak Raj) was solemnised with defendant No.2 (Sonu). However, defendant No.1 developed illicit relations with the mother of defendant No.2, namely Pushpa Rani, wife of Krishan Lal, and he has been residing with her for the last about two years. Even defendant No.2 left the house of plaintiff No.4 and started residing in her parental house. In fact, defendant No.2, in connivance with her mother, wanted to grab the entire property of Ved Parkash, and that is how, the two sale deeds were got executed from defendant No.1 in favour defendant No.2.

In defence, defendants No. 1 and 2, disputed the nature of the suit property being ancestral in the hands of Ved Parkash. For the suit land was a self acquired property of defendant No.1, which was purchased by defendant No.2, after verifying the revenue records, for a consideration. And the suit property had already been mutated in favour of defendant No.2.

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Likewise, in a separate written statement filed by defendant No.3, who had purchased a part of the suit property vide sale deed dated 8.11.2011, she set up a plea of being bonafide purchaser and also denied if the suit land was ancestral in the hands of defendant No.1.

Upon consideration of the matter in issue and evidence on record, both the courts concurrently concluded that plaintiff-Kaushalya Devi (PW1), conceded in her cross-examination, that post marriage of Janak Raj, he started living separately from other family members. She admitted that her family was not a Joint Hindu Family and they were living separately from each other. She also admitted that pursuant to the execution of the two sale deeds by Ved Parkash in favour of defendant No.2, possession was delivered to her, at the time of execution of the sale deed itself. To prove the nature of the suit property as ancestral, the plaintiff had examined Surinder Singh (PW2), Sadar kanungo, who proved on record the excerpts, but he too conceded that he had not brought the original record, nor the record produced was prepared by him. The plea sought to be raised before the appellate court: for the issue regarding Joint Hindu Family property was not framed by the trial court, and therefore the matter required to be remitted for re-decision, was also rejected by the appellate court, for the plaintiffs themselves, in their pleadings, maintained that property was a Joint Hindu Family property, and therefore, defendant (Ved Parkash) had no right to alienate the same. Once the parties to the lis were conscious of the controversy and led their respective evidence to show if the property was, indeed, a Joint Hindu Family property, and the witnesses were also cross-examined in this regard, non framing of a specific issue was inconsequential. Ex facie, onus to prove that the suit property in the hands of Ved Prakash

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was, indeed, ancestral in nature or a Joint Hindu Family property was upon the plaintiffs, which they apparently failed to discharge. Upon being pointedly asked, learned counsel for the appellants 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

September 24, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO