

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4552 of 2015 (O&M)

Date of decision : 23.5.2019

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Sunita and another

.....Appellants

vs.

Ram Kishor and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Shubham Kaushik, Advocate for

Mr. Vinod S. Bhardwaj, Advocate for the appellants

None for the respondents.

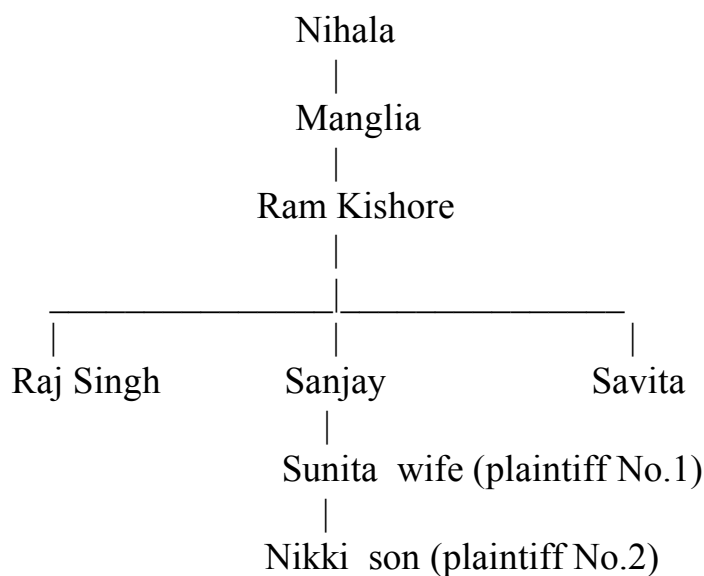
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H. S. Madaan, J.

Briefly stated facts of the case are that plaintiffs- Sunita wife and Master Nikki, minor son of Sanjay son of Ram Kishore, residents of village Lawan, Tehsil and District Mohindergarh, had brought a suit against respondents i.e. Sanjay and his father Ram Kishore, seeking a declaration that they are entitled to create charge on 1553/4879 share of defendant No.2 under Section 39 of the Transfer of property Act on the property comprised in Khewat No. 166, Khatoni No. 212 total land measuring 244 kanal 9 marlas situated at

village Tajpur, Tehsil Sub Ateli, District Mahendergarh, besides seeking a decree for permanent injunction restraining the defendants from alienating the suit property etc.

The relationship between the parties can be best understand with the help of following pedigree table:-



According to version of the plaintiffs, the parties constituted a Joint Hindu Family. As per the revenue record, defendant No.2 owns 1553/4879 share in the property, which had devolved upon Ram Kishore from his ancestors. In that way, plaintiff No.2 Master Nikki acquired interest in it by birth. Defendant No.1 Sanjay threw the plaintiff No.1 alongwith minor plaintiff No.2, out of the matrimonial home and since then they are staying with parents of plaintiff No.1. Plaintiff No.1 has not been doing any work and as such unable to maintain herself and her son Master Nikki. She had filed a petition under Section 125 Cr.P.C. against respondent No.1 Sanjay, wherein interim maintenance of Rs.1,000/- was allowed to her. Defendants, in collusion with each other wanted to alienate the suit land and to create charge upon it. Defendant No.1 had sold 4 kanal 2

marlas vide sale deed dated 12.11.2010 and mutation on the basis thereof had been sanctioned on 18.11.2010. According to the plaintiffs, in case defendants succeed in selling their entire land, the plaintiffs would not be able to recover maintenance amount and as such charge under Section 39 of the Transfer of Property Act, be created on the land of defendants and they be restrained to alienate the suit land. With such prayer the plaintiffs had brought the suit in question.

On notice, the defendants appeared and filed a written statement contesting the suit raising preliminary objections to the effect that the plaintiffs had no locus standi to bring the suit; that they had not approached the Court with clean hands, in as much as, they had concealed true and material facts; that the suit was bad for non-joinder and mis-joinder of necessary parties. On merits, defendants contended that defendant No.2 was sole owner of 1553/4879 share; that defendant No.1 had no concern with the suit property and that the suit property did not have nature of joint and co-parcenary property. Though relationship between the parties stood admitted but it was denied that the plaintiffs were turned out of the matrimonial home by defendant No.1. As per version of the defendants, plaintiff No.1 is a quarrelsome lady and she did not want to stay with defendant No.1. She had wrongly initiated proceedings under Section 125 Cr.P.C. against defendant No.1; that defendant No.1 has been giving maintenance to the plaintiffs and defendant No,2 had been wrongly made party to the suit. It was denied that defendant No.1 had sold any

land. It was contended that defendant No.2 was absolute owner of his share and had full right to deal with the property and no charge could be created under Section 39 of the Transfer of Property Act. Refuting the remaining allegations the defendants prayed for dismissal of the suit.

Plaintiffs filed replication controverting the allegations in the written statement while reiterating the stand taken in the plaint.

From the pleadings of the parties, following issues were framed:-

1. Whether plaintiff is entitled for the decree of declaration and permanent injunction as prayed for?
OPP
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether the plaintiff has not come with clean hands in the court? OPD
4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
5. Relief.

Parties led evidence in support of their respective claims.

In order to prove their case, plaintiff No.1 examined herself as PW-1, Dhanpati as PW-2, Jogender Singh as PW-3 and thereafter evidence of the plaintiffs was closed by order on 15.5.2014.

On the other hand, defendant No.1 examined himself as DW-1, Ram Kishore as DW-2, Babu Lal as DW-3, Harphool as DW-4,

Bahadur Singh as DW-5 and thereafter closed their evidence.

After hearing the arguments, the trial Court returned finding on issue No.1 to the effect that defendants were restrained to alienate to suit land without permission of the court and the said issue was decided accordingly. Issues No. 2 to 4 were decided against the defendants.

In view of the findings returned on the issues, the trial court decreed the suit partly and defendants No. 1 and 2 were restrained to alienate to suit land without permission of the court. That was so done vide judgment and decree dated 24.9.2014.

Defendant No.2 Ram Kishore felt aggrieved by the judgment and decree passed by the trial Court and went in appeal to the District Judge, Narnaul, who vide judgment dated 14.7.2015 partly accepted the appeal and judgment and decree passed by the trial Court was set aside. It was so done on 14.7.2015.

Feeling dissatisfied with the judgment passed by the Ist Appellate Court, the plaintiffs have knocked at the door of this Court by way of filing the present regular second appeal, notice of which was given to the respondents who did not appear despite service and were proceeded against ex parte.

I have heard learned counsel for the appellants, besides going through the record.

Learned District Judge, Narnaul, hearing the appeal in his judgment has observed that as per jamabandi for the year 2008-2009, Ram Kishore son of Mangaliya defendant No.2 is shown to have

1553/4879 share in the total land measuring 244 kanal 9 marla, which according to the plaintiffs is an ancestral coparcenary property and on the basis of admission of defendants No. 1 and 2, in their depositions, the trial Court has held the property to be a co-parcenary property. Plaintiff No.2 minor son of defendant No.1 is co-parcener in the suit property. But it was admitted by PW-1 Smt. Sunita that on 18.12.2008 she was turned out of the matrimonial home and since then she alongwith her minor son has been living with her mother in village Lawan and defendants have placed on record copy of order passed by the trial Court granting interim maintenance @ Rs.1,000/- per month to the plaintiffs, appearing as PW-1 plaintiff Sunita in her cross examination, admitted that she has received Rs.48,000/- from defendant No.1. DW-2 Ram Kishore in his testimony has deposed that he had two sons who are living separately and he alone was managing the land and no cogent evidence has been placed on record by the plaintiffs to show that she was living jointly in the family and in the absence of Joint Hindu Family and line of succession, the Court could not presume the nature of property to be ancestral/co-parcenary, as there is no cogent evidence that Sanjay was living with his father Ram Kishore, further Sanjay and Nikki the plaintiff were living in Joint Hindu Family, therefore, property cannot be stated to be ancestral co-parcenary. The Ist Appellate Court has referred to authority **Matu Ram (deceased) through LRs vs. Kartar Singh and others 2004 (3) LJR 818 (P&H)**, wherein it was observed that even an admission of a party may not be enough to hold that property to be

ancestral or co-parcenary as to prove the nature of the property, the court goes by evidence that may come on the records of the case. It was further observed that no documentary evidence has been brought on record by the plaintiff to prove that prior to Ram Kishore, the property was held by Mangaliya and before that it was held by the father of Mangaliy namely, Nihal. The court has observed that charge would be created on the suit land if the property has been transferred by defendant No.2 to defendant No.1, it has not been done so far. The plaintiffs were not entitled to get any maintenance from defendant No.2. In any case, defendant No.2 if taken to be *karta* of the family, can alienate the land for the purpose of legal necessity and learned trial court has rightly observed that charge cannot be created on the suit land. As such the plaintiffs are not entitled to create any charge in view of Section 39 of the Transfer of Property Act of the suit land. Therefore, the finding of the trial court on issue No.1 was reversed and issue No.1 was decided in against the plaintiffs. Accordingly, the appeal was accepted. The judgment and decree passed by the trial Court was set aside and suit filed by the plaintiffs was dismissed.

At the very outset, it may be said that the judgment passed by the District Judge, Narnaul, is detailed, well reasoned based upon proper appraisal and appreciation of evidence, legal and factual position and correct interpretation of law. There is no illegality or infirmity in the said judgment, which might have called for interference by this Court while hearing appeal against the judgment of District Judge.

No substantial question of law arises in the present appeal.

Thus finding no merit, the appeal stands dismissed.

23.5.2019
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(H.S. Madaan)
Judge

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