

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

RSA No. 2019 of 2018 (O&M)

Date of decision : March 19, 2019

Smt. Gyarsi Devi @ Gyarshi

.....Appellant

Versus

Umrao and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.K. Yadav, Advocate
for the appellant.

LISA GILL, J.

Appellant – plaintiff is aggrieved of judgment and decree dated 26.08.2014 passed by learned Civil Judge (Junior Division), Narnaul as well as judgment and decree dated 08.01.2018 passed by the learned Additional District Judge, Narnaul.

Appellant – plaintiff filed a suit for declaration to the effect that she is the owner in possession of the suit property to the extent of half share. It is to be noticed at the outset that the appellant – plaintiff is the daughter of defendant – respondent No. 1 Umrao son of Heta. It was pleaded that the suit property was ancestral, joint Hindu Family Coparcenary property. One Gopal inherited the property from his father Ram Sahai and grandfather Heta. Property of said Gopal devolved upon his legal representatives Chaju, Mohru and Ramswarup to the extent of half share and in favour of Heta to the extent of half share. After the death of Heta his property devolved upon his legal heirs Angana and Umro i.e. defendant No. 1 in equal share vide mutation No. 353 dated 19.10.1954. It is pleaded that the plaintiff – appellant being the sole legal heir of Umrao – defendant No. 1 was the owner in actual physical possession over the suit property to the

extent of half share being a coparcener. It is further stated that the plaintiff's father i.e. defendant No. 1 was defrauded by Dharambir due to which sale deed of the property was executed by the defendant - Umrao in favour of defendants No. 2 to 5, who are the wife and daughters-in-law of said Dharambir. It is wrongly mentioned in the sale deed dated 31.05.2010 executed in favour of the said defendants that a consideration of ₹28,07,000/- was passed to Umrao. Not a penny was received by the defendant – Umrao. Hence, the suit was filed.

Defendant No. 1 - Umrao contested the suit. Various preliminary objections were taken in the written statement and averments on merits were controverted. It was denied that the suit property was ancestral coparcenary property which had devolved upon him from his forefathers. It is categorically stated in his written statement that sale deed dated 31.05.2010 was validly executed by him for consideration as mentioned above. It was denied that there was any inducement by Dharambir for sale of the said property to defendants No. 2 to 5. To the contrary, it was the plaintiff, who exerted undue influence upon defendant No. 1 to deliver the sale proceeds from the said sale deed to her but when he did not succumb to her pressure, the present suit was filed as a device to pressurise him. Defendants No. 2 to 5 filed a joint written statement contesting the claim set up by the plaintiff. It is denied that the suit property is ancestral in the hands of defendant No. 1. It is stated that the plaintiff was married over 25 years ago and since then she was residing with her husband and children at village Siyakho in Rajasthan. It was denied that any fraud and deception was committed by the said defendants due to which sale deed dated 31.05.2010 was executed. It is further stated that the sale deed was

executed for valuable consideration out of the free will and consent of defendant No. 1, who was in sound disposing mind. Dismissal of the suit was prayed for by the defendants. No replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is owner in possession to the extent of $\frac{1}{2}$ share in the suit property?OPP.
2. If issue No. 1 is proved, whether the plaintiff is entitled for decree of declaration with consequential relief of permanent injunction as prayed for ?OPP
3. Whether suit of the plaintiff is not maintainable? OPD.
4. Whether the plaintiff has filed false and frivolous suit? OPD.
5. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record, facts and circumstances concluded that the plaintiff had failed to prove her case on the basis of the evidence on record and no evidence was led to prove that the suit property was ancestral coparcenary property in the hands of defendant No. 1. Furthermore, even if it is so, the sale deed was executed due to legal necessity, as it is proved on record that defendant No. 1 was under debt. It was further observed that the plaintiff was not proved to be in possession of the suit property, therefore, the suit simplicitor for a declaration without consequential relief of possession was not maintainable. Accordingly, the plaintiff's suit was dismissed.

Appeal preferred by the present appellant – plaintiff was dismissed by the learned Additional District Judge, Narnaul vide judgment dated 08.01.2018. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants argues that both the learned

courts below have grossly erred in dismissing the suit filed by the plaintiff. Property in question is duly proved to be ancestral in nature. Therefore, property could not have been alienated in the absence of any legal necessity. Moreover, it is not proved on record that any consideration ever passed hands in this case. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 26.08.2014 passed by learned Civil Judge (Junior Division), Narnaul as well as judgment and decree dated 08.01.2018 passed by the learned Additional District Judge, Narnaul be set aside and suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have perused the file with his able assistance.

Relationship between the plaintiff and defendant No. 1 is a matter of record. Both the learned courts below while referring to para 221 of Hindu Law as expounded by Mulla held that Gopal was related to defendant No. 1 - Umrao within three degrees of ascendants including the holder of the suit property, therefore, the ancestral nature of the property is not proved. It is further held after referring to the statements of PW7 Sadhu Ram i.e. husband of the plaintiff and PW6 Rajesh that the plaintiff was not in actual possession of the suit property. In fact she is proved to be residing with her husband Sadhu Ram at her in-laws home at Siyakho, Rajasthan. The plaintiff herself did not step in the witness box in this case. Be that as it may, it is relevant to refer to the testimony of DW1 Umrao i.e. defendant No. 1 himself. Defendant No. 1 specifically stated that the suit property was not ancestral in his hands and the property had been sold by him vide a valid registered sale deed dated 31.05.2010 in favour of defendants No. 2 to 5. It is the categoric stand of defendant No. 1 that the plaintiff, his daughter was

married of 25 years ago and since then she has been residing with her husband and children at her matrimonial village at Rajasthan. Consideration of ₹28,07,000/- was received by him for the sale of property in question. The plaintiff was pressurising him to part with the entire sale proceeds, to which he did not succumb and the suit was filed, only with a view to pressurise him to part with the money.

Various witnesses proved different sums of money borrowed by DW1 Umrao from them. DW2 Ramswarup proved that defendant No. 1 - Umrao took a loan of ₹40,000/- from him to solemnise the marriage of daughter. The principal amount had inflated to a sum of ₹7,01,280/-with interest. DW2 further deposed that defendant No. 1 - Umrao had paid ₹13 lakhs to the plaintiff from the sale proceeds. DW5 Nityanand also deposed about the loans taken by Umrao from DW5. He has proved the pronote and receipt of the pronotes executed by defendant – Umrao as (Ex.DW5/B) to Ex. DW5/D). DW6 too deposed regarding the loan taken by Umro from DW6 and return of the said amount in June, 2010. DW6 proved the pronote and receipts Ex.DW6/B to Ex.DW6/D. PW7 Dalip Singh has also proved the pronote and receipt Ex. DW6/B to DW6/D executed by defendant No. 1. A perusal of the file reveals that even if the suit property is accepted to be ancestral in nature, it is apparent that the same was sold by defendant No. 1 - Umrao for legal necessity inasmuch as he had to repay the debts that he incurred. Execution of the sale deed dated 31.05.2010 for valuable consideration is duly proved by the evidence on record. Defendant No.1- Umrao has clearly admitted the same. There is not an iota of evidence to show that the sale deed was fraudulent or that any fraud had been committed upon defendant No.1. In my considered opinion, no question of law much

less a substantial question of law is involved in this appeal for the consideration of this Court.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 26.08.2014 passed by learned Civil Judge (Junior Division), Narnaul as well as judgment and decree dated 08.01.2018 passed by the learned Additional District Judge, Narnaul which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

(Lisa Gill)
Judge

March 19, 2019

rts

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