

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

**RSA No2423 of 2018 (O&M)
Date of Decision:27.05.2019**

Darshna and another

.....Appellants

Versus

Mahaveer Parshad and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Peeush Gagneja, Advocate
for the appellants.

LISA GILL, J.

Appellants-plaintiffs are aggrieved of judgement and decree dated 19.11.2014, passed by learned Civil Judge (Jr. Division), Abohar, as well as judgement and decree dated 24.03.2017, passed by the learned Additional District Judge, Fazilka.

Brief facts necessary for the adjudication of the case are that the present appellants along with respondent no.6 in this appeal (son of appellant no.1) filed a suit for declaration and permanent injunction. It is claimed that the plaintiffs are the joint owners of 1/ 5th share of the land as detailed in the plaint. Declaration was also sought to the effect that transfer deed dated 24.02.2009, by respondent no.5-Jai Lal (since deceased), in favour of defendants no.1 to 4, is illegal, null, void and ineffective qua the rights of the plaintiffs. It is pleaded that the land in question was owned by one Ridmal and the property devolved upon Tulsa Ram after Ridmal's death

and thereafter upon Jai Lal-defendant no.5. Defendants no.1 to 4 and Som Dutt i.e., husband of appellant no.1 were real brothers and sons of defendant no.5. The suit property was alleged to be ancestral, coparcenary property. Som Dutt died on 05.08.2003 and the plaintiffs claimed to have become joint owners of the property being coparceners. It is further claimed that during the pendency of the suit, the suit land was transferred in favour of defendants no.1 to 4 by defendant no.5 without their consent. Therefore, the said transfer deed and the subsequent mutation no. 1267 be declared illegal, null, void and ineffective qua their share. When the defendants refused to admit the plaintiff's claim, the suit was filed.

Defendants no.1, 3 and 5 did not appear before the learned trial Court despite notice and were proceeded against *ex parte*, but during the proceedings, defendant no.5 was reported to have died. His wife Chand Kouri was impleaded as his legal representative and she was represented by her counsel in the matter. Defendants no.2 and 4 filed a joint written statement raising various preliminary objections. Relationship between the parties is admitted. Averments on merits were however denied. It is stated that Som Dutt, husband of appellant no.1 and father of plaintiffs no.2 and 3 was working as Junior Engineer from the year 1981 with Satluj Beas Link. He was living separately from the defendants but along with his family. The suit property, was stated to be self acquired property and the plaintiffs had no concern therewith. It is further stated that plaintiff no.1 executed an affidavit dated 01.06.2009 stated therein that she had received the share of her property as well as that of the minors through sale deed dated 01.06.2009 from the defendants. Sale deed was executed without consideration. She

agreed to withdraw the earlier suit, which she had filed against the defendants. Therefore, the present suit was not maintainable. It is further denied that the suit property was inherited by Jai Lal from Tulsa Ram. Jai Lal had every right to deal with the property as he deemed fit. Fraudulent execution of the transfer deed was denied being incorrect. Dismissal of the suit was prayed for.

Written statement was also filed by Chand Kouri, legal representatives of defendant no.5, taking similar pleas. Dismissal of the suit was prayed for.

Replication was filed by defendants no.2, 4 and 5. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for relief of declaration as prayed for in the plaint?OPP
2. Whether the plaintiff is entitled for relief of permanent injunction as prayed for in the plaint?OPP
3. Whether the plaintiff has any cause of action or locus standi to file the present suit?OPP
4. Whether the suit of the plaintiff is not maintainable in the present form.?OPD
5. Whether the plaintiffs are estopped by their own acts and conduct from filing the present suit?OPD
6. Whether the plaintiffs have concealed the true and material facts from the Court, if so its effect?OPD
7. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances, as well as the evidence on record concluded that the plaintiffs failed to prove the ancestral coparcenary nature of the property. Sale deed dated 01.06.2009, Ex.D-2 in her favour without any consideration for 49 kanals

was found to be proved on record. Accordingly, the suit filed by the plaintiffs was dismissed.

Appeal preferred by the present appellants was dismissed by the learned Additional District Judge, Fazilka, vide impugned judgement and decree dated 24.03.2017.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that the ancestral co-parcenary nature of the property is proved on record from the evidence adduced by the plaintiffs. It is contended that the learned Additional District Judge, Fazilka, has wrongly dismissed the application for additional evidence filed by the plaintiffs. Plaintiffs sought to produce the jamabandi for the years 1917-18, 1941-42 and 1964-65. It is further submitted that even if the abovesaid jamabandies are ignored, jamabandi for the year 1967-68, Ex.PX, clearly depicts that defendant no.5-Jai Lal, inherited the suit property from his father Tulsa Ram. Therefore, nature of the property is proved to be ancestral, joint hindu coparcenary property. In such a situation, it was not open for Jai Lal to have transferred the property in question in favour of defendants no.1 to 4 to the exclusion of the present appellants. It is further submitted that sale deed dated 01.06.2009 was executed in respect to 49 Kanals of land after receiving due consideration for the same. It is wrongly held by both the learned Courts below that no consideration passed to the vendors in this transaction and that the appellants had received their share of the property by way of the said sale deed. It is denied that it is only thereafter, that the earlier suit was withdrawn by the plaintiff. It is thus prayed that this appeal be allowed and the judgement sand

decrees dated 19.11.2014 and 24.03.2017, passed by the learned Courts below be set aside and the suit filed by the appellants-plaintiffs be decreed throughout.

I have heard learned counsel for the appellants and have gone through the file with his assistance.

Relationship between the parties is not in dispute. In order to prove the ancestral coparcenary nature of the property, appellants sought to rely upon the jamabandi for the year 1967-68, Ex.PX. It is a matter of record that as per the said jamabandi, mutation no. 429 in respect to the property in question was not sanctioned by way of inheritance. The property was transferred in the name of three sons of Tulsa Ram namely Jai Lal, Bihari Lal and Banwari Lal in equal shares. The said mutation relates to the change of ownership specifically marked as 'Tabdeel Malkeet'. It is further not in dispute that as per Ex.PX, Tulsa Ram is reflected to be the owner of land measuring 304 Kanal 4 Marlas. As per entry of mutation no. 429 dated 29.09.1972, the entire land measuring 304 Kanal 4 Marlas was transferred in favour of the three sons of Tulsa Ram in equal share. Transfer of property is not on the basis of inheritance.

Learned counsel for the appellants is unable to deny that the share of Jai Lal out of the total land of 304 Kanal 4 Marlas in any case, is 1/3 i.e., a little more than 101 Kanals. Jai Lal, admittedly had five sons i.e., Som Dutt, husband of appellant no.1 and defendants no.1 to 4. Sale deed dated 01.06.2009, Ex.D-2, for 49 Kanals 01 marla, was admittedly executed in favour of the plaintiffs.

It is a matter of record that the plaintiff-Darshana Devi in her

cross-examination has specifically deposed that she did not have any money, either in cash or in her bank account during the year 2008-09. Defendants have taken a specific stand that the said property measuring 49 Kanal 01 Marlas was transferred without any consideration and it is thereafter, that the earlier suit filed by the plaintiffs, was dismissed in default on 27.08.2012, Ex.D-6. Defendants have duly tendered in evidence certified copy of the plaint of the earlier suit filed by the plaintiffs, Ex.D-3, certified copy of order dated 26.03.2011, Ex.D-4, copy of statement made by learned counsel for the plaintiffs, Ex.D5, besides copy of order dated 27.08.2012, Ex.D-6. Thus, it has been rightly held by both the learned Courts below that the plaintiffs have failed to prove their case on the basis of the evidence adduced by them. The application for additional evidence has been rightly dismissed by the learned Additional District Judge, Fazilka in the given factual matrix.

Learned counsel for the appellants, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings vide impugned judgements, which call for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 19.11.2014 and 24.03.2017 passed by the learned Civil Judge (Jr. Division) Abohar and learned Additional District Judge, Fazilka, respectively, are upheld.

There is a delay of 40 days in re-filing of this appeal. Keeping

in view the fact that the matter has been adjudicated on merits, question of delay in re-filing of this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

27.05.2019

s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.

[LISA GILL]

Judge