

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

RSA No.3596 of 2018 (O&M)

Date of Decision:09.09.2019

Janak and others

.....Appellants

Versus

Satish Kumar and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

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

LISA GILL, J.

Appellant-plaintiffs have filed this appeal being aggrieved of judgment and decree dated 19.08.2014, passed by the learned Civil Judge (Sr. Division), Rewari, as well as judgment and decree dated 17.11.2017, passed by the learned Additional District Judge, Rewari, whereby their suit for declaration has been dismissed.

Appellant-plaintiffs, in this suit, pleaded that the land in dispute belongs to one Sheo Lal son of Ram Parsad, who was the great grandfather of appellant-plaintiffs no.1 and 2 and grandfather-in-law of appellant no.3. The property was claimed to be ancestral coparcenary property. It is pleaded that Kartar Singh son of Surat Singh-respondent no.3. i.e., the grandson of Sheo Lal, father of appellants no.1 and 2 and husband of appellant no.3, illegally transferred this property by way of two sale deeds i.e. No. 7193 and 7194 dated 10.01.2011 in favour of defendants no.2 and 2. Sale deeds were claimed to be illegal, null and void qua the rights of the plaintiffs as the transfer was made without any legal necessity or consent of the plaintiffs. Hence the suit was filed.

Suit was resisted by defendants no.1 and 2. Various preliminary objections were raised. It is denied that the property in question was Joint Hindu Coparcenary Property. It was stated to be the self acquired property in the hands of defendant no.3 as he had acquired the same through judgement and decree dated 22.02.1990. Mutation No. 233 dated 10.08.1991 was stated to be sanctioned in this respect. Both the sale deeds were claimed to have been validly executed with the free will of defendant no.3 after receiving the entire consideration. Dismissal of the suit was prayed.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to a decree of declaration to the effect that registered document no. 7193 and 7194 dated 10.01.2011 are null and void?OPP
2. Whether the plaintiffs are entitled for decree of permanent injunction restraining the defendants no.1 and 2 from creating any charge or alienating the suit property on the basis of impugned registered documents as prayed for?OPD
3. Whether the suit of the plaintiff is not maintainable in the present form?OPD
4. Whether the plaintiff has not approached the Court with clean hands before the Court?OPD
5. Relief.

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

Learned trial Court on considering the evidence on record, dismissed the suit filed by the plaintiffs by concluding that the plaintiffs were unable to prove that the property in question was Joint Hindu Coparcenary Property. The same was acquired by respondent-defendant no.3 through a Court decree. Thus, the plaintiffs failed to prove the ancestral nature of the property or the existence of any pre-existing right of theirs.

Alienation was held to be valid.

Appeal filed by the plaintiffs-appellants was dismissed by the learned Additional District Judge, Rewari, vide impugned judgement and decree dated 17.11.2017.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiffs.

Learned counsel for the appellants vehemently argues that both the learned courts below have grossly erred in dismissing the suit filed by the appellant-plaintiffs, who have led cogent evidence on record to prove the ancestral nature of the property. It is submitted that once it is admitted that the property was owned by Sheo Lal, great grandfather of appellants no.1 and 2, there is no question regarding the property being self acquired in the hands of defendant no.3. Defendant no.3, it is stated is proved to be a person afflicted with bad habits and therefore having sold the property in question in favour of defendants no.1 and 2, without the consent of the plaintiffs and without any legal necessity. It is thus prayed that the present appeal be allowed and the judgements and decrees passed by the learned Courts be set aside. Consequently suit filed by the appellant-plaintiffs be decreed throughout.

I have heard learned counsel for the appellants and have gone through the photocopy of record produced in Court today, with his assistance.

It is a matter of record that defendant no.3 acquired the suit property by way of decree dated 22.09.1990 in Civil Suit No. 664 of 1990, titled as 'Ramotar Vs. Sheo Lal'. The land in question was transferred by

Sheo Lal in favour of his grandsons namely Ram Avtar, Kartar and Basti Ram. Mutation No. 233 was sanctioned on 10.08.1991. Thus, it cannot be said that the land in dispute is proved to be the Joint Hindu Family Coparcenary Property in the hands of defendant no.3. I have also gone through the testimony of PW-4-Rajesh Devi i.e., appellant no.3 in the present appeal. PW-4 has admitted that her husband was not engaged in agriculture work, and he is stated to be the owner of a tractor installed with a grinding machine (Chakki), which was claimed to be the only source of their livelihood. There is indeed no evidence on record to indicate, much less prove, that respondent no.3 is addicted to any vices and is a spend thrift person. It is not denied that the appellants are admittedly living together with respondent no.3.

Respondents no.1 and 2 have examined DW-3-Satish Kumar and DW-4-Beer Singh i.e., the attesting witnesses of the sale deeds in question. The said witnesses have deposed that the sale deeds in question were executed by respondent no.3-Kartar Singh, after receipt of the entire sale consideration amount without any pressure or undue influence. It is thus proved on record that the said sale deeds are not the outcome of any fraud or misrepresentation. Thus, the plaintiffs indeed failed to prove their case on the basis of the evidence led by them.

It is relevant to note at this stage that the Hon'ble Supreme Court in **Gurnam Singh (D) By Lrs and others Vs. Lehna Singh (D) By LRs 2019 (7) SCC 641** has observed as under:-

“Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case

involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to reappreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal.”

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 addressed.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 19.08.2014 and 17.11.2017 passed by the learned Civil Judge (Sr. Division) Rewari and learned Additional District Judge, Rewari, respectively, are upheld.

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

09.09.2019
s.khan

[LISA GILL]
Judge

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