

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

RSA No. 4575 of 2018 (O&M)

Date of decision : September 09, 2019

Harkanwal Singh

.....Appellant

Versus

Surjit Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rishabh Gupta, Advocate
for the appellant.

LISA GILL, J.

Appellant – plaintiff is aggrieved of judgment and decree dated 22.12.2014 passed by the learned Civil Judge (Junior Division), Dasuya whereby the suit for declaration filed by him was dismissed as well as judgment and decree dated 01.08.2017 passed by the learned Additional District Judge, Hoshiarpur, whereby his appeal was dismissed.

Brief facts necessary for adjudication of the case are that the appellant – plaintiff filed a suit seeking declaration to the effect that land, as detailed in the plaint, is the coparcenary property of the plaintiff and defendants No. 1 and 2 and that the plaintiff is a coparcener in possession of the same besides two transfer deeds dated 02.07.2010 executed by his father Surjit Singh – defendant No. 1 in favour of Palwinder Pal Singh (plaintiff's brother) being illegal, sham transactions without necessity and ineffective qua the rights of the plaintiff. Consequent relief of permanent injunction is also sought. It is pleaded that the plaintiff's grandfather namely Arvail Singh

owned a big chunk of land in West Pakistan, which was ancestral property in his hands. After partition of the country, the plaintiff's ancestors migrated to India. The suit property besides other property was allotted in lieu of the land left by Arvail Singh in Pakistan. Grandfather of the plaintiff – Gur Amar Singh is stated to have succeeded to his father's estate by way of natural succession and after the death of Gur Amar Singh, Surjit Singh, father of the plaintiff and defendant No. 1 inherited the suit property. It is further stated that Surjit Singh had received the property in his capacity as Karta of the coparcenary family when the plaintiff was born and the plaintiff alongwith his father and grandfather constituted a Joint Hindu coparcenary. Therefore, the plaintiff had a share in the suit property held by Surjit Singh by virtue of being a member of the coparcenary. It is alleged that two transfer deeds dated 02.07.2010 were managed by defendant No. 2 (real brother of the plaintiff) from defendant No. 1 in a clandestine manner. The transfer is claimed to be without any legal necessity, therefore, ineffective qua the plaintiff as the suit property is ancestral coparcenary property. Defendant No. 2 threatened to take possession of the suit property. Hence, the suit was filed.

The suit was contested with the assertions that estate of Gur Amar Singh devolved upon the plaintiff and Surjit Singh – defendant No. 1 in equal shares on the basis of a registered will dated 02.06.2010 executed by Gur Amar Singh. The plaintiff even transferred/sold a part of the property, which he had inherited from Gur Amar Singh. In case, the suit property is claimed to be ancestral, the plaintiff too has no right to the suit property, which fell to him on the basis of the will of Gur Amar Singh. It is denied on merits that Arvail Singh was a big land owner in West Pakistan or

that he migrated to India and property in lieu thereof was allotted to him. It is denied that Surjit Singh – defendant No. 1, father of the plaintiff and defendant No. 2 inherited the property as Karta of the coparcenary family. The transfer deed is claimed to be a valid and legal document executed by defendant No. 1 in favour of defendant No. 2 in lieu of services rendered by him, besides love and affection for him. Defendant No. 2 had earlier executed a valid Will dated 02.06.2010 in favour of defendant No. 2 in his sound disposing mind. The transfer deeds were executed by way of abundant caution. Dismissal of the suit was prayed for.

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

1. Whether the plaintiff is entitled to the declaration as prayed for?OPP.
2. Whether plaintiff is entitled to permanent injunction as prayed for?OPP
3. Whether suit of plaintiff is not maintainable? OPD.
4. Whether the plaintiff is stopped from filing this suit by his own act and conduct?OPD2
5. Whether plaintiff has no cause of action and locus standi to file the suit ? OPD
6. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record concluded that the plaintiff failed to prove his case on the basis of the evidence led, consequently the suit was dismissed. Appeal filed by the appellant was also dismissed by the learned Additional District Judge, Hoshiarpur vide judgment dated 01.08.2017. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that both

the learned courts below have erred in dismissing the suit filed by the appellant – plaintiff. It is submitted that the nature of property remains ancestral and coparcenary, even if half of the property of Gur Amar Singh had devolved upon the appellant himself by way of a Will. It is contended that merely because the appellant is in receipt of half of the property of his grandfather by way of a Will, cannot in any manner change the nature of the other half share, which devolved upon his father Surjit Singh. The appellant is entitled to a share in the property which devolved upon his father Surjit Singh as well. It is further contended that once the Will dated 02.06.2010 was executed by Surjit Singh in favour of defendant No. 2 – Palwinder Pal Singh, the execution of the transfer deeds dated 02.07.2010 casts a grave suspicion on the said instruments. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 22.12.2014 passed by the learned Civil Judge (Junior Division), Dasuya as well as judgment and decree dated 01.08.2017 passed by the learned Additional District Judge, Hoshiarpur, 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 parties is not in dispute. Learned counsel for the appellant is unable to deny that the property of Gur Amar Singh i.e. grandfather of the plaintiff and defendant No. 2 and the father of defendant No. 1 – Surjit Singh devolved upon the present appellant – plaintiff and his father Surjit Singh in his equal shares on the basis of a registered will executed by Gur Amar Singh. Surjit Singh – plaintiff's father executed Will dated 02.06.2010 bequeathing his half share in favour of his

other son i.e. defendant No. 2. Thereafter, two transfer deeds dated 02.07.2010 were executed by Surjit Singh in respect to the same property in favour of defendant No. 2, his other son. Defendant No. 3 - daughter of Surjit Singh was admittedly proceeded exparte and she has staked no claim to the property in question.

The appellant, in my considered opinion, has indeed failed to prove the ancestral nature of the suit property. It is a settled position that until and unless the property in question is proved to be ancestral in nature on the basis of positive evidence led, the same cannot be presumed to be so. The presumption in fact is otherwise. Admittedly, no such evidence has been led by the appellant. To the contrary, PW2 - Narinder Singh has admitted that the property of Gur Amar Singh devolved upon the appellant – plaintiff and his father - Surjit Singh on the basis of a registered Will of Gur Amar Singh. Plaintiff – appellant himself, while deposing as PW3, categorically admitted devolution of the property of Gur Amar Singh (his grandfather) in equal shares upon him and his father - Surjit Singh. Defendant No. 3, the plaintiff's other brother did not get any share in Gur Amar Singh's property. PW3 further revealed that he had sold land measuring 4 kilas in the year 1984 during the life time of Surjit Singh. He, however, obtained a power of attorney in favour of his daughter from his father Surjit Singh. On the basis of this power of attorney, sale deed was executed in his favour as well. It is rightly held by both the learned courts below that the plaintiff has failed to prove the suit property to be ancestral coparcenary property.

Learned counsel for the appellant is unable to point out any evidence on record to prove that transfer deed dated 02.07.2010 is a result

of any fraud or misrepresentation. Both the learned courts below, in the factual matrix of the case, have rightly dismissed the suit filed by the appellant – plaintiff.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law, is involved for consideration in this appeal neither is there any ground available to the appellant under Section 41 of the Punjab Courts Act, 1919. The Hon'ble Supreme Court in **Gurnam Singh (D) by LRs versus Lehna Singh (D) by LRs 2019 7 SCC 641** has observed as under:-

“ We remind the High Courts while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to reappraise 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 appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 22.12.2014 passed by the learned Civil Judge (Junior Division), Dasuya as well as judgment and decree dated 01.08.2017 passed by the learned Additional District Judge, Hoshiarpur. which calls for any interference by this Court in second appeal.

There is a delay of 83 days in re-filing of RSA No. 4575 of 2018. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic.

Application is disposed of, accordingly.

No other argument has been addressed.

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

September 09, 2019
rts

(Lisa Gill)
Judge

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