

In the High Court of Punjab and Haryana at Chandigarh

RSA- 1630 of 2018(O&M)

Date of Decision: 8.2.2019

Sudha Sharma

---Appellant

versus

Jamna Dass through Lrs and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Alok Mittal, Advocate
and Mr. Kunal Siag, Advocate
for the appellant**

Rekha Mittal, J.
CM No. 4384-C 2018

Prayer in this application is for condoning delay of 30 days in filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 30 days in filing the appeal stands condoned.

Disposed of accordingly.

Main case

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit filed by Sudha Sharma, daughter of Jamna Dass for declaration and permanent injunction by assailing release deed bearing No. 3759 dated 18.10.2006 purported to be executed by Jamna Dass in favour of Manoj Kumar son of Jamna Dass defendant No. 2 in respect of land measuring 112 kanal 1 marla, situated

within the revenue estate of village Rampura Bishnoian, Tehsil Dabwali, District Sirsa and mutation No. 2047 sanctioned on the basis of release deed, was dismissed by the trial court vide judgment and decree dated 23.3.2016 and appeal preferred by unsuccessful plaintiff-appellant did not find favour with the Additional District Judge, Sirsa.

The sole plank of challenge to the release deed is that suit property is ancestral coparcenary property in the hands of Jamna Dass, therefore, the appellant being daughter of Jamna Dass had a right therein being one of the coparceners and as such Jamna Dass was not competent to transfer 50% of the land owned by him by way of release deed in question.

Counsel for the appellant would apprise the court that an application for adducing additional evidence to place on record certain revenue documents was filed before the Appellate Court but the appeal was decided without disposing of the application for additional evidence. It is further argued that if the documents sought to be produced by way of additional evidence, part of records maintained by the revenue authorities, are taken into consideration, it would establish plea of the appellant that land subject matter of the release deed was ancestral coparcenary property in the hands of Sh. Jamna Dass in which daughter(s) of Jamna Dass also acquired right by way of birth, in the light of amendment of Section 6 of the Hindu Succession Act, 1956 with effect from 9.9.2005.

Counsel for the appellant was directed to make submissions on the basis of documents already produced on record and the ones sought to be produced by way of additional evidence to establish his contention that suit land was ancestral coparcenary property in the hands of Jamna Dass in

which appellant being daughter of Jamna Dass can claim right as a coparcener on the basis of amendment of Section 6 of the Act. Counsel made strenuous effort to refer to revenue documents particularly copies of jamabandis from 1963-64 onwards in order to show that some part of the land recorded to be ownership of Bakhtawar Singh in column No. 5 of jamabandi for the year 1963-64 is also subject matter of release deed executed by Jamna Dass, sufficient to show that this land was inherited by Jamna Dass from his father Bakhtawar, therefore, the same was ancestral coparcenary property in the hands of Sh. Jamna Dass.

On a pointed query with regard to mutation in respect of estate of Sh. Bakhtawar, counsel has referred to document Ex. D1 i.e. mutation sanctioned on 28.4.1976 whereby land left behind by Bakhtawar was inherited by Rameshwar Dass, Ram Gopal, Sohan Lal and Jamna Dass sons of Bakhtawar in equal share. Column No. 13 of this document makes reference to registered Will No. 56 dated 12.7.1971 on the basis whereof other class-I heirs of Sh. Bakhtawar were excluded from inheritance and land was inherited only by four sons of Sh. Bakhtawar. The document does not make reference to the khasra numbers incorporated in the jamabandi for the year 1963-64 or khasra Numbers of suit land.

Since land owned by Bakhtawar was inherited by his four sons on the basis of testamentary succession to the exclusion of other class-I heirs after commencement of the Hindu Succession Act, 1956, it is difficult to accept contention of the appellant that land in dispute was ancestral coparcenary property in the hands of Sh. Jamna Dass in which she acquired right by way of birth. However, the matter, might have invited

consideration if this document referred to the suit land and inheritance on the basis of testamentary succession would not have excluded the other class-I heirs of deceased Bakhtawar. In this view of the matter, even if all the documents referred to during the course of hearing are taken into consideration, the appellant-plaintiff has failed to establish that suit land, subject matter of release deed, is ancestral coparcenary property in the hands of Sh. Jamna Dass, therefore, he incurred legal disability to transfer the same by way of release deed in favour of one of his sons namely Rajesh Kumar-defendant No. 3. In the given circumstances, no fruitful purpose would be served by remitting the matter to the Appellate court for deciding the appeal afresh while deciding the application for additional evidence, stated to be left undecided. In this context, reference can be made to judgments of this Court **Bhag Singh Malik @ Bhal Singh Malik vs. Chinmay Tapovan Trust Yol Camp, Dharamshala (H.P.) and another CR No. 4453 of 2018 decided on 1.8.2018** and **Prabhu Dayal Vs. Hardevi, 1994(1) PLR 398.**

No other point has been raised.

In view of what has been discussed hereinbefore, the appeal fails and is accordingly dismissed in limine. Miscellaneous applications, if any, shall be deemed to be disposed of.

(Rekha Mittal)
Judge

8.2.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No