

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

RSA No. 9813 of 2018 (O&M)

Date of decision : May 06, 2019

Harbans Singh

.....Appellant

Versus

Dev Singh through LRs and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Shilak Ram Hooda, Advocate
for the appellant.

LISA GILL, J.

Appellant – plaintiff is aggrieved of judgment and decree dated 21.01.2015 passed by the learned Civil Judge (Junior Division), Rajpura as well as judgment and decree dated 11.10.2017 passed by the learned Additional District Judge, Patiala.

The present appellant i.e. plaintiff filed a suit for declaration to the effect that he is the owner in joint possession to extent of 1/3rd share in the suit land and transfer deed dated 27.11.2008 executed by the defendant – Dev Singh was illegal null and void qua his rights. Transfer deed was stated to be a result of fraud. Further prayer for permanent injunction restraining the defendants from selling, mortgaging etc. of the suit property was sought.

Relationship between the parties is admitted. Appellant – plaintiff Harbans Singh is the son of Dev Singh - defendant No. 1 (now represented by his legal representatives i.e. children of his other son Jaimal Singh). Defendant No. 2 Sudesh Piari is a widow of Jaimal Singh i.e. sister-in-law (Bhabi) of the appellant.

As per the pleadings in the plaint, the plaintiff and the defendants constituted a joint Hindu Family. Suit property was claimed to be ancestral coparcenary property of the plaintiff and the defendants. It is

stated that the suit property belonged to one Hari Ram, who had two sons Ishar Singh and Assa Singh. Ishar Singh died unmarried and issueless. Assa Singh had three sons namely Dev Singh (defendant No. 1) Pritam and Jaswant Singh. Dev Singh had three children namely Harbans Singh (plaintiff), Harbans Kaur and Jaimal Singh. Harbans Kaur and Jaimal Singh have admittedly passed away. Jaimal Singh is survived by his widow Sudesh Piari and children Mohinder Singh and Mohinder Kaur. It is averred by the plaintiff that defendant No. 2 is a clever person and with the mala fide intention to grab the plaintiff's share managed to get a transfer deed dated 27.11.2008 executed by defendant No. 1, who is an old aged person of more than 80 years and was unable to take care of his interests. It is further pleaded that he was hard of hearing besides suffering from a weak eye sight. Moreover, Dev Singh, it is alleged, had no right to execute the transfer deed in favour of defendant No. 2, the property being ancestral coparcenary property. Plaintiff requested the defendants to admit his claim and have the transfer deed cancelled. On refusal, present suit was filed.

Defendants contested the suit. Various preliminary objections were raised while not denying the relationship between the parties. It was denied that the parties ever constituted a joint Hindu Family as alleged or that the suit property was ancestral coparcenary property. Suit land, it is claimed, was succeeded to by defendant No. 1 from his father Assa Singh and paternal uncle Ishar Singh who admittedly died issueless. It is denied that prior to Assa Singh and Ishar Singh, the suit property was owned by Hari Ram grand father of defendant No. 1. Moreover, defendant No. 1, it is claimed, had already given land to the plaintiff in a family settlement/partition, which had been earlier arrived at. 50/265 share out of

the total land of defendant No. 1 had already been transferred to the plaintiff. Furthermore, it is defendant No. 2 and her children, who were looking after defendant No. 1 - Dev Singh, in the evening of his life. Plaintiff was residing separately since a number of years and had never served defendant No. 1. It is denied that the transfer deed is illegal, null and void. Dismissal of the suit was prayed for.

Replication was not filed.

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

- i) Whether plaintiff is entitled to the declaration as prayed for?OPP.
- ii) Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
- iii) Whether the suit is not legally maintainable? OPD.
- iv) Whether the plaintiff has no locus standi to file the present suit? OPD.
- v) Whether no proper court fee has been affixed on the plaint?OPD
- vi) Whether plaintiff is estopped from filing the present suit by his own act and conduct?OPD
- vii) Whether the defendant is entitled to special compensatory costs under Section 35-A CPC? OPD
- viii) Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record, facts and circumstances concluded that the suit property was not ancestral coparcenary property of the parties, there being no evidence on record to prove the same. It is further observed that the plaintiff himself has admitted defendant - Dev Singh to be of sound mind and not suffering from any ailment as pleaded. Learned trial Court has taken note of admission of the

plaintiff regarding partition of the property. Appeal filed by the appellant was also dismissed by the learned Additional District Judge, Patiala vide judgment dated 11.10.2017. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in dismissing the suit filed by the present appellant. The ancestral coparcenary nature of the property has been duly proved on record. Reference is made to Ex.P1, jamabandi for the year 2006-07. It is further submitted that there is positive oral evidence on record to prove the nature of the property. The appellant being the son of Dev Singh is entitled to 1/3rd share of the property in question. Learned counsel further submits that there is no reason whatsoever on record to indicate as to why Dev Singh would prefer to transfer his property in favour of his daughter-in-law rather than give the property to his sole surviving son. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 21.01.2015 passed by the learned Civil Judge (Junior Division), Rajpura as well as judgment and decree dated 11.10.2017 passed by the learned Additional District Judge, Patiala 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.

Perusal of the impugned judgments and decrees reveals that the plaintiff has indeed failed to prove the property in question to be ancestral coparcenary property of the parties. Reference to Ex. P1 i.e. jamabandi for the year 2006-07 does not in any manner indicate nature of the property to be ancestral. Learned counsel for the appellant is unable to point out any

evidence on record to reflect the property to be ancestral property of the parties. It is a settled position that until and unless proved by positive evidence on record, property cannot be presumed to be ancestral coparcenary property.

Testimony of the plaintiff, who stepped in the witness box as PW1, is telling of the factual matrix of the case. PW1 admitted that his father Dev Singh had given 1½ bigas of land to him after getting the same partitioned. Plaintiff (PW1) further admitted that defendant No. 2 was residing with the defendant - Dev Singh and was serving him in the evening of this life. PW1 categorically admitted that his father was not suffering from any kind of ailment. PW2 Charan Singh as well as PW3 Surinder Singh examined by the plaintiff have also admitted the factum of defendant - Dev Singh residing with his daughter-in-law/defendant No. 2 and his grandsons and being served by them. PW2 and PW3 categorically stated that defendant - Dev Singh was hale and hearty, having a good eye sight and capable of looking after his own interests. They further admitted that transfer deed dated 27.11.2008 was executed by defendant - Dev Singh out of his own free will, without any kind of pressure.

Thus, it is rightly observed by both the learned courts below that the property in question is not proved to be ancestral coparcenary property. Partition of the property has been admitted by PW1 - plaintiff, besides admitting having received 1½ bigas of land from his father after partition. Argument raised by learned counsel for the appellant that the father could not have preferred his daughter-in-law over the sole surviving son, is clearly devoid of merit, keeping in view the factual matrix of the present case where it is the wife and children of a pre-deceased son, who are

looking after the father-in-law/grandfather and the sole surviving son is admittedly living separately since a number of years after having taken the property from his father after partition. There is indeed no evidence on record to indicate that Dev Singh was not entitled to execute the transfer deed in question. Both the learned courts below rightly observed that the appellant had admittedly received land from his father and was living separately.

[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 in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 21.01.2015 passed by the learned Civil Judge (Junior Division), Rajpura as well as judgment and decree dated 11.10.2017 passed by the learned Additional District Judge, Patiala which calls for any interference by this Court in second appeal.

No other argument has been addressed.

There is a delay of 288 days in re-filing and 5 days in filing of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in re-filing and filing of this appeal has been rendered academic. Application is, accordingly, disposed of.

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

May 06, 2019

rts

(Lisa Gill)
Judge