

In the High Court of Punjab and Haryana at Chandigarh

RSA-719 of 2015 (O&M)

Date of Decision: 22.1.2020

Mam Chand and another

---Appellants

vs.

Shiv Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. H.R.Bhardwaj, Advocate
for the appellants

Mr. Sukhdeep Singh, Advocate for
Mr. Parminder Singh, Advocate
for the respondents

Rekha Mittal, J.

Challenge in the present appeal has been directed against judgment and decree dated 3.12.2014 passed by the Additional District Judge, Ambala whereby appeal against decree and judgment dated 4.1.2013 passed by the trial court dismissing suit of the respondent-plaintiff is partly allowed. Operative part of the judgment reads as follows:-

“ In view of foregoing discussion emanating from record, this court find justification in setting aside the impugned judgment and decree qua relief of permanent injunction and rests of findings are affirmed. Resultantly, defendant-respondent No. 1 is permanently restrained from alienating, transferring and mortgaging suit land on the basis of impugned sale deed Ex. D1

in any manner. Consequently, the present appeal is partly dismissed and partly accepted with no order as to costs.”

The present lis pertains to land measuring 6 marlas, part of khasra No. 54//16, situated in village Shardhaheeri, Tehsil Barara, District Ambala with boundaries described in head note of the plaint. The respondent-plaintiff Shiv Singh s/o Charat Singh, owner of khasra No. 54//16 and erstwhile owner of suit land measuring 6 marlas filed suit on the allegations that appellant was working under Charat Singh for several years and asked for small room for residential purpose, constructed by his father. Later, defendant No. 1 left the service. Raj Bala-defendant No. 2 earned bad name in the village and involved several persons by raising false allegations and later used to compromise the matter by getting something. In December 2006, she concocted a false story and under pressure of police, Charat Singh had to transfer 6 marlas of land in her name without consideration though an amount of Rs. 60,000/- is shown to have been paid. The sale deed is without consideration, legal necessity or benefit of the family. Charat Singh inherited the suit property from his forefathers.

The appellants filed the written statement raising preliminary objection to reject the plaint for want of proper court fee. All material allegations on the basis whereof sale deed in respect of suit land was sought to be assailed were denied with a prayer for dismissal of the suit.

The trial court framed issues, read thus:-

1. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP

2. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD

3. Relief.

The respondent-plaintiff examined Fateh Mohammad PW1, Charat Singh PW2 and himself appeared in the witness box.

To refute evidence of the respondent-plaintiff, appellant Mam Chand examined himself and Chura Ram, attesting witness of sale deed.

Having heard counsel for the parties in the light of materials on record, the trial court determined issue No. 1 against the respondent-plaintiff, issue No. 2 in favour of appellants-defendants and eventually the suit was dismissed with no order as to costs. The Appellate Court partly allowed the appeal, as noticed hereinbefore. Not only this, the Appellate Court recorded findings in respect of sale deed Ex. D1 in paras 14 and 15 of the judgment of said court but later in para 17 of the judgment, it has been held that plaintiff did not challenge cancelation of registered sale deed, therefore, without cancellation of sale deed, he can not straightway take possession of suit land. It was also held that since sale deed was executed without consideration and legal necessity, therefore, relief to the extent of permanent injunction restraining defendant No. 1 from alienating, mortgaging, transferring the property in question on the basis of impugned sale deed is accepted. Further held that relief qua possession shall be ascertained by filing civil suit seeking decree of declaration with consequential relief of possession as required under law. The court also referred to judgment of Hon'ble the Supreme Court **Anathula Sudhakar vs. P. Buchi Reddy (Dead) by Lrs and others, 2008 (2) RCR (Civil) 879**

and observations recorded therein.

Perusal of findings of the Appellate Court reveals that on one hand, the court did not set aside sale deed Ex. D1 but at the same time it allowed the relief of permanent injunction restraining defendant No. 1 from alienating the suit land on the basis of impugned sale deed Ex. D1. It is surprising that if sale deed in respect of suit land in favour of one of the defendants has not been set aside for any reason whatever, how the Appellate Court on the basis of its observations recorded qua the said sale deed passed a decree of permanent injunction against alienation of the suit land on the basis of sale deed Ex. D1. This apart, as per case set up by respondent-plaintiff, disputed land was transferred by Charat Singh in favour of defendant No. 2 as she levelled allegations against him and there was pressure of police. If Sh. Charat Singh has executed the sale deed in favour of defendant No. 2, defendant No. 1 otherwise can not alienate the suit property as he is not the owner thereof.

The Appellate Court recorded findings that suit property is joint Hindu undivided family property or it was ancestral in nature, therefore, could not be sold without legal necessity. The Appellate Court has not referred to any document on the basis whereof it has recorded with regard to suit property being ancestral in the hands of Charat Singh or same could not be sold without legal necessity and consideration.

In para 12 of the judgment, the court has held that Mam Chand DW1 admitted in his cross examination that entire land in the hands of Charat Singh was belonging to his father and grand father. If any excerpt prepared by revenue official was not tendered in evidence, it can not be said

that suit land was self-acquired in the hands of Charat Singh. Rather, it is apparent on the face of record that Charat Singh had inherited suit land from his father Baljit Singh so the property can not be treated as non-ancestral or self-acquired property. Further held that Shiv Singh being only son of Charat Singh has right in ancestral property by birth and to protest against alienation without legal necessity.

There can not be quarrel with settled position in law that admission with regard to nature of property is not sufficient to accept that property is ancestral in the hands of its holder. Equally true is that every property is to be treated as self-acquired property of its holder unless proved otherwise. The trial court negated plea of the respondent that suit land was ancestral with the findings that plaintiff placed on record only copy of jamabandi for the year 2000-01 (Ex. P1) in which his father Charat Singh along with his brothers is shown to be a co-sharer/co-owner in possession of land measuring 5 kanal 5 marlas comprised in two khasra numbers. However, the said document does not establish that suit land was ancestral in the hands of father of the plaintiff.

The Appellate Court appears to have proceeded on assumptions and presumptions that suit property was inherited by Charat Singh from his father, therefore, the same is ancestral in nature. There is nothing on record to suggest that any mutation sanctioned on death of father of Charat Singh was placed on record to prove that suit land was inherited by Charat Singh from his father, if so, on what basis. In this view of the matter, findings of the Appellate Court that suit land was ancestral coparcenary property in the hands of Charat Singh are the result of non-

appreciation of legal and factual aspects involved in the case.

Indisputably, Charat Singh is the executant of the sale deed and he was alive when his son Shiv Singh instituted the suit in the year 2007. During life time of Charat Singh, Shiv Singh has no right in the self-acquired property of Charat Singh nor can he maintain a suit to challenge the impugned sale deed on the premise that the same is without consideration. It appears that the present litigation is the result of collusion/connivance between the respondent and his father. Charat Singh brought his son forward to seek possession of suit land knowing fully well that in case he files a suit for setting aside the aforesaid sale deed, he may be called upon to pay ad valorem court fee being executant thereof. The Appellate Court has overlooked vital issues involved in the case and committed glaring and blatant mistakes by recording observations with regard to the sale deed and allowing relief of injunction. In view of the above, decree and judgment passed by the Appellate Court suffer from perversity, thus, can not be allowed to sustain.

In view of what has been discussed hereinbefore, the appeal is allowed. Impugned judgment and decree is set aside. Suit filed by the respondent-plaintiff is dismissed with costs.

(Rekha Mittal)
Judge

22.1.2020
paramjit

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