

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

-.-

RSA 3047 of 2017

Date of decision: 20.01.2020

Randhir

.....*Appellant*

Versus

Krishana and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Amarjit Singh Virk, Advocate
for the appellant

Mr. Dinesh Arora, Advocate
for respondent No. 1 and 2

-.-

Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against judgment and decree dated 22.11.2016 passed by the Additional District Judge, Bhiwani whereby appeal against judgment and decree dated 09.07.2014 passed by the trial Court dismissing suit of the respondents/plaintiffs was allowed, impugned judgment and decree dated 09.07.2014 was set aside and suit filed by the respondents/plaintiffs seeking declaration in respect of land measuring 23 kanal 16 marlas and 14 kanal 0 marla, detailed in para 1 of the trial Court judgment by assailing release deed No. 908 dated 02.06.2010 executed by defendant No. 2 Lalji in favour of defendant No. 1 being null and void, was decreed.

The primary dispute in the present litigation is, whether land, subject matter of release deed dated 02.06.2010, was ancestral coparcenary

property in the hands of Lalji and respondents/plaintiffs had a right therein, thus, Lalji was not competent to execute the release deed in favour of appellant/defendant No. 1 namely Randhir.

The sole submission made by counsel for the appellant is that Lalji along with his four uncles purchased land measuring 117 kanal 12 marlas vide sale deed dated 31.09.1960/09.09.1960 from Mohar Singh son of Ruda on the basis whereof, mutation No. 625 Ex. D2 was sanctioned. It is further argued that as Lalji purchased 1/5th share out of aforesaid land, he became owner of land measuring 23 kanal 16 marlas on the basis of aforesaid sale. He would inform that out of land measuring 23 kanal 16 marlas, release deed was executed qua land measuring 20 kanal 17 marlas, therefore, challenge to release deed at the behest of respondents/plaintiffs is not tenable. It is further argued that the trial Court by taking into consideration mutation Ex.D2 had rightly negated plea of the respondents/plaintiffs that the said land was ancestral coparcenary property in the hands of Lalji but the appellate Court set aside the judgment of trial Court without adverting to mutation Ex.D2.

Counsel representing the respondents/plaintiffs, on the contrary, would argue that as the contesting defendant (s) admitted the suit property to be ancestral coparcenary property in the hands of Lalji, the same is sufficient to establish their plea in this regard. In addition, it is argued that as the appellate Court had decided the appeal without taking into consideration document Ex.D2, judgment and decree passed by the Appellate Court may be set aside and the matter be remitted to the said Court for decision of the appeal fresh.

I have heard counsel for the parties, perused the paper book and records.

Counsel for respondents No. 1 and 2 has not made any submission to controvert contention of the appellant that land measuring 23 kanal 16 marlas was purchased by Shri Lalji from its erstwhile owner vide sale deed executed way back in the year 1960 on the basis whereof, mutation No, 625 Ex.D2 was sanctioned in favour of Lalji and his co-purchaser regarding total land measuring 117 kanal 12 marlas, to the extent of 1/5th share each.

Perusal of the judgment of trial Court would make it evident that the said Court by adverting to submissions of the parties and in view of document Ex.D2, mutation recorded on the basis of sale deed No. 528 dated 09.09.1960 negated plea of the plaintiffs that land contained in release deed was ancestral coparcenary property in the hands of Shri Lalji or he was not competent to transfer the same. The appellate Court, for the reasons best known, ignored document Ex.D2 while setting aside the judgment and decree passed by the trial Court. As the appellate Court has failed to take into consideration document Ex.D2, which has material bearing on decision of the case on merits, the judgment passed by the said Court suffers from perversity.

As per the settled position in law, admission in respect of ancestral coparcenary nature of suit property is not sufficient to decide nature of the property as such. On the other hand, document Ex.D2 is more than sufficient to refute contention of the respondents/plaintiffs that land measuring 23 kanal 16 marlas was ancestral coparcenary property. Since

Lalji was absolute owner of the aforesaid property out of which he executed release deed in respect of land measuring 20 kanal 17 marlas, plea of the respondents/plaintiffs claiming share in the said property had rightly been negated by the trial Court. The first appellate Court committed a gross error by setting aside well considered and well founded findings recorded by the trial court. In view of the above, judgment and decree passed by the first appellate Court cannot be allowed to sustain and accordingly set aside.

In view of what has been discussed herein-before, the appeal is allowed; judgment and decree passed by the appellate Court is set aside and that of the trial court is restored.

No orders as to costs.

(Rekha Mittal)
Judge

20.01.2020
Mohan Bimbura

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