

IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

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RSA No.769 of 2018 (O&M)

Date of Decision : 11.02.2020

Sandeep and Ors.

... Appellants

versus

Kartar Singh & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Shalender Mohan, Advocate
for the appellants.

RAJBIR SEHRAWAT, JUDGE (ORAL)

This is the second appeal filed by the unsuccessful plaintiffs/appellants challenging the concurrent judgment and decree passed by both the Courts below.

Parties herein are referred to as the plaintiffs/defendants, as they were referred in the original suit.

The brief facts given in the present appeal are that the plaintiffs/appellants herein had filed a suit for declaration that the sale deed No.2536 dated 13.07.2012 executed by defendant No.1 in favour of defendants No.2 and 3 is illegal and the consequent mutation is also null and void and not binding upon the rights of the plaintiffs.

After considering the evidence led on file and hearing the parties, the trial Court dismissed the suit filed by the plaintiffs. Aggrieved against that, the plaintiffs preferred an appeal before the lower Appellate Court. However, the

lower Appellate Court also dismissed the appeal, therefore the present appeal has

been preferred.

Arguing the case, learned counsel for the appellants has submitted that both the Courts below have gone wrong in law in not appreciating the fact that the suit property was an ancestral property. Therefore, defendant No.1, being father of the plaintiffs No.1 to 3 and husband of plaintiff No.4, did not have share more than $\frac{1}{5}^{\text{th}}$ in the suit property. Therefore, he could not have sold the property, at all, being ancestral one and he could not have sold more than $\frac{1}{5}^{\text{th}}$ Share, if at all, he was to sell part of the suit property. Still further, it is submitted that the suit property has been sold by defendant No.1 for very meager amount to fulfill his requirements of ill habit, being addicted to the liquor.

As has been recorded by the Courts below and has come in evidence, the suit property came to defendant No.1 through a Court decree. It is well-settled law that, there is no presumption of a property being ancestral property. Rather the presumption qua the property is at of being self-acquired property. It was for the respondents/defendants to prove the character of the property to be an ancestral one by leading cogent evidence in that regard. Although, learned counsel for the appellants has referred to the document Ex. D6 to say that the decree itself was of a family settlement, however, even the said family settlement has not been proved on record. Otherwise also; even if the said family settlement is taken into consideration that would also show that the suit property had come to defendant No.1 by other than by natural successions from three male ascendants in the line of succession. Therefore, even the said document would not be sufficient to show the nature of the property to be an ancestral one.

This Court also does not find any substance in the argument of the learned counsel for the appellants that defendant No.1 had only $\frac{1}{5}^{\text{th}}$ share or that the land has been sold for inadequate consideration. Once the suit property is not shown to be ancestral property, there is no question of defendant No.1 having only

1/5th share. He was the absolute owner of the entire property. Mere inadequacy of the consideration can also not be any reason for the contract of sale of the said property being declared as invalid.

Although, the counsel also submitted that the plea of the plaintiffs had been qua the bad habits of defendant No.1 leading to the squandering of the property. However, there is nothing led in evidence by the plaintiffs even to show any bad habits with defendant No.1 at the relevant time. Hence, this argument has to be noted only to be rejected.

No other argument has been raised by the counsel for the appellants.

In view of the above; findings no merit in the present appeal, the same is dismissed.

11th February, 2020

Manju

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No