

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.938 of 2021 (O&M)

Date of decision:26.10.2021.

Ashok Kumar and another

...Appellants

Versus

Hema and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Singal, Advocate,
for the appellants.

ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

C.M.No.4427-C-2021

For the reasons stated in the application, the delay of 120 days in filing the appeal is condoned.

MAIN

This regular second appeal has been filed by the plaintiffs assailing the correctness of the judgments and decrees passed by the Courts below.

The plaintiffs while claiming that the property is ancestral coparcenary property and therefore, Shiv Charan (grand father of the plaintiffs) had no right to bequeath the property in favour of Smt. Satyawati (the plaintiff's grand mother) through a testamentary disposition dated 08.08.1983, filed a suit for declaration with a consequential relief of joint

possession and permanent injunction.

Defendant no.4 admitted the claim of the plaintiffs. Whereas defendant no.1 to 3 claim that the suit property is neither ancestral nor coparcenary property.

In order to prove that the suit property is ancestral, the plaintiffs got prepared the excerpt of the revenue record. However, the aforesaid excerpt was not proved on the record.

The relevant witness failed to bring the original record. The trial court also noticed that the excerpt has been prepared only by referring to jamabandi for the year 1909-1910, 1913-1914, 1933-1934, 1975-1976 and 2005-2006, whereas the remaining record has not been examined. Thus, the trial Court dismissed the suit.

The learned first appellate Court opened the can of worms i.e. the reason behind filing the present suit. Smt. Satyawati had entered into an agreement to sell with regard to the suit property in favour of defendant no.5, who was declared entitled to the property in a suit for specific performance of the agreement to sell. The sale deed was executed through the process of Court. The learned first appellate court further found out that the other sale deeds executed by late Sh. Shiv Charan had never been challenged.

The learned counsel representing the appellants contends that both the Courts have erred while dismissing the suit. He further contends that an application for additional evidence was filed before the first appellate Court which has not been decided.

Be that as it may.

The learned counsel representing the appellants admitted that

the various sale deeds executed by late Sh. Shiv Charan have not been challenged by the plaintiffs. The plaintiffs have been given sufficient opportunities to prove their case. Furthermore, defendant no.5 has been declared entitled to the property after a long litigation. Moreover, after the death of late Sh. Shiv Charan in the year 1983, the property was bequeathed in favour of his widow Smt. Satyawati. Thereafter, she executed a registered Will in favour of 4 sons and a grand daughter of Sh. Shiv Charan. The plaintiff's father Sh. Umesh Charan Paliwal never assailed its correctness. The present suit came to be filed only on 01.12.2010, whereas Smt. Satyawati died on 08.10.2003.

Keeping in view the aforesaid facts, no ground to interfere in the concurrent findings of fact, is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

October 26, 2021
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(ANIL KSHETARPAL)
JUDGE

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