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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-596-2020 (O&M)

Date of Decision:27.07.2022

JASVIR KAUR

.. Appellant

Vs.

GURCHARAN SINGH AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Pradeep Sharma, Advocate and
Mr. B.S. Mann, for the appellant.

...

Manoj Bajaj, J. (Oral)

Appellant/plaintiff is aggrieved against the judgment and decree dated 24.07.2019 passed by Addl. District Judge, Fazilka in Civil Appeal RBT No.30/03.07.2017, thereby affirming the judgment and decree dated 04.05.2017 passed by Civil Judge (Jr. Divn.), Abohar in Civil Suit No.85-1/2014 dismissing her suit for declaration, joint possession and permanent injunction.

Briefly, the facts of the case are that the plaintiff claimed ownership of the suit property i.e. house measuring 32 feet x 85 feet 3 inch and a vacant plot measuring 32 feet x 93 feet 8 inch on the ground that the suit property was previously owned by her mother Chand Kaur, who was residing with her and the plaintiff used to serve her mother, therefore, the mother had executed Will/agreement dated 07.04.2003 in her favour. As per the pleadings, defendants No.1 to 3, who are plaintiff's brothers and sister respectively, have no concern with the property in question, as they are living separately in different villages. The defendants No.1 to 3

connived with defendant No.4 (Jagsir Singh) and defendant No.5 (Vishnu) and prepared an affidavit dated 07.07.2014 sworn by Gurcharan Singh-defendant No.1 in favour of defendant No.4 and also prepared two agreements dated 05.10.2014 executed by Harmail Singh (defendant No.2), himself and as attorney of Smt. Guddi (defendant No.3) in favour of defendant No.4 in order to alienate 6 marlas of the suit property. Similarly, Gurcharan Singh transferred 0-2½ marlas of suit property in favour of defendant No.5. On these broad allegations and cause of action, the plaintiff on the strength of the agreement-cum-Will dated 07.04.2003 prayed for a decree to declare the instruments executed by defendants No.1 to 3 in favour of defendants No.4 and 5 as null and void, and as a consequential relief prayed for injunction.

Upon notice, defendants appeared and contested the suit by filing their separate written statements and raised the preliminary objections that the suit is not maintainable, as previously the document dated 07.04.2003 relied upon by plaintiff in her previous suit No.61-1 dated 07.02.2008 and by virtue of the decree dated 16.08.2012, it was held that it does not confer any right upon the plaintiff. The appeal against the said decree dated 16.08.2012 was also dismissed on 20.03.2013. The other averments in the plaint were also denied, and it was prayed that the suit be dismissed.

After considering the pleadings and the stand adopted by the rival parties, the trial Court had framed in all, seven issues and after examining the evidence of both the sides, the trial Court proceeded to decide the material issues against the plaintiff and in favour of defendants by way of judgment and decree dated 04.05.2017.

Aggrieved against the said judgment and decree dated 04.05.2017, the appellant/plaintiff preferred appeal before the Addl. District Judge, Fazilka, but the same was also dismissed through impugned judgement and decree dated 24.07.2019. Hence this regular second appeal.

Learned counsel for the appellant has argued that the findings returned by both the Courts below are not sustainable, as the plaintiff's mother Chand Kaur in her life time had given the property to the plaintiff by executing a Will dated 07.04.2003. He submits that though the expression in the said Will suggests the nature of transfer of the property as sale, but it strictly is not a sale deed, therefore, the findings of both the Courts that for lack of compulsory registration, the subject instrument does not confer title upon plaintiff is wrong and deserves to be set aside.

Learned counsel has further argued that the agreement to sell allegedly executed in favour of defendants No.4 and 5 by his brothers and sister has been disbelieved, therefore, in view of this Will dated 07.04.2003 (Ex. PA), the property would devolve upon the plaintiff. He prays that the appeal be allowed and the impugned judgment and decree dated 24.07.2019 be set aside.

After hearing the learned counsel and considering the material on record, this Court finds that the document is also signed by the plaintiff, and it does not contain any expression that the testator ever desired to bequeath the property in her favour. On the contrary, there is a specific mention that the property is being transferred by way of sale in favour of Jasvir Kaur, thus, this writing relied upon by plaintiff cannot be construed either as Will of her mother or a sale deed.

Further, neither this document is registered nor there is any

evidence of passing on the sale consideration to the other, therefore, this Court finds that the findings returned by the trial Court and upheld by the appellate Court are based upon correct appreciation of material on record and do not suffer from perversity.

Apart from it, during the course of hearing, learned counsel has conceded that the document relied upon by plaintiff in the present suit was also relied by her in the previous suit, wherein it was observed that this does not confer any right upon her. The said judgment and decree has attained finality and would bind the plaintiff.

No other argument was raised.

Resultantly, this Court finds that the appeal does not involve any substantial question of law, therefore, the same is dismissed. No costs.

27.07.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No