

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

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RSA-468-2022 (O&M)

Date of decision : 20.04.2022

Jasmeen Kaur

...Appellant

versus

Angrej Singh and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.S.Virk, Advocate for the appellant.

ALKA SARIN, J. (Oral)

The present regular second appeal has been preferred by the plaintiff against the concurrent findings recorded by both the Courts below.

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for declaration to the effect that she is the daughter of defendant-respondent No.1 and that the suit land was ancestral in nature and hence the sale deeds dated 12.02.2014 executed by defendant-respondent No.1 in favour of defendant-respondent Nos.2 to 4 were illegal, null and void and further for permanent injunction restraining the defendant-respondents from alienating the suit land and in the alternative for joint possession of the suit land.

It is the case set up in the plaint that the plaintiff-appellant was residing with her mother, namely, Harjinder Kaur, who was married to defendant-respondent No.1. Defendant-respondent No.1 is stated to have deserted Harjinder Kaur and the plaintiff-appellant. On an application filed under Section 125 of the Criminal Procedure Code, 1973 by the plaintiff-appellant and Harjinder Kaur, maintenance was awarded to the tune of

Rs.2500/- per month vide order dated 16.01.2012 and defendant-respondent No.1 threatened to alienate the ancestral land and subsequently alienated the same to defendant-respondent Nos.2 to 4 vide sale deeds dated 12.02.2014. It is further averred that the suit land was joint Hindu ancestral property and as such defendant-respondent No.1 had no right to alienate the same. At the time of filing of the suit the plaintiff-appellant was minor and subsequently vide order dated 18.07.2017 the plaintiff-appellant was permitted to sue in her personal capacity after attaining the age of majority.

Upon notice, defendant-respondent No.1 did not appear despite service and was proceeded against ex-parte. Defendant-respondent Nos.2 to 4 appeared and filed their written statement raising preliminary objections qua maintainability of the suit, falsity of the suit and concealment of material facts. On merits, it was averred that the suit land was neither ancestral nor coparcenary in the hands of defendant-respondent No.1 and that they had purchased the suit land from defendant-respondent No.1 without notice of any litigation.

On the pleadings of the parties, the following issues were framed :

1. Whether the suit property is joint Hindu family, coparcenary property, as prayed for ? OPP
2. If so, whether defendant No.1 is a Karta of said joint Hindu family ? OPP
3. If so, whether the plaintiff is a coparcener with the defendant No.1 ? OPP

4. If so, whether sale deeds dated 12.02.2014 are illegal, null and void ? OPP
5. If so, whether the plaintiff is entitled for declaration, as prayed for ? OPP
6. If so, whether the plaintiff is entitled for permanent injunction, as prayed for ? OPP
7. Whether the plaintiff is entitled for decree of joint possession in the alternative ? OPP
8. Whether the defendants No.2 to 4 are bona fide purchasers, without notice and for consideration ?
OPD
9. Whether suit of the plaintiff is not maintainable ?
OPD
10. Relief.

The Trial Court held that the suit land had been mutated in favour of defendant-respondent No.1 on the basis of registered Will dated 06.01.2000 and further that the suit land was neither ancestral in the hands of defendant-respondent No.1 nor the plaintiff-appellant had any right in the same as a coparcener. The suit was accordingly dismissed. The appeal preferred by the plaintiff-appellant was also dismissed.

Learned counsel for the plaintiff-appellant would contend that the suit land was ancestral in the hands of defendant-respondent No.1 and that she had every right in the suit land.

Heard.

The only argument raised by the learned counsel for the plaintiff-appellant in the present appeal is that the suit land in the hands of defendant-respondent No.1 was ancestral in nature and being coparcenary property the sale deeds executed by defendant-respondent No.1 were null and void. A perusal of the judgments and decrees passed by both the Courts below clearly reveal that no evidence whatsoever was led by the plaintiff-appellant to show that the suit land was ancestral in the hands of defendant-respondent No.1. Rather, it has been proved on the record that the suit land had been mutated in the name of defendant-respondent No.1 on the basis of a registered Will dated 06.01.2000. It has come in the testimony of Baldev Singh Patwari, who appeared as PW-1, that the mutation was carried out in favour of defendant-respondent No.1 on the basis of the registered Will dated 06.01.2000. He further admitted that 'Khata Surat Singh' was not ancestral property. The plaintiff-appellant in the present case has not been able to discharge the onus of proving that the suit land was ancestral in nature. Findings recorded by the Courts below regarding the nature of the suit land are findings of fact. During the course of hearing, learned counsel for the plaintiff-appellant failed to point out any patent illegality or perversity in either of the judgments rendered by both the Courts below. He also could not refer to any question of law much less substantial question of law which arose in the present regular second appeal.

The plaintiff-appellant had to stand on her own feet and prove the case set-up by her. In the present case there is no credible evidence on the record to show that the suit land was ancestral.

No other point has been argued. No question of law, much less any substantial question of law, arises in the present case.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The regular second appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

April 20, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO