

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103

RSA-3129-2015(O&M)
Date of Order: 11.05.2022

Gulab Rai

..Appellant

Versus

Shiva Dass (now deceased) through his LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajiv Sharma, Advocate, for the appellant.
Mr. Sant Lal Barwala, Advocate, for respondent no.2 and 3.

ANIL KSHETARPAL, J(Oral)

While assailing the concurrent findings of fact arrived at by the Courts below, plaintiff no.1 has filed this Regular Second Appeal.

Some facts are required to be noticed.

Sh. Gulab Rai and Sh. Chaman Lal (sons of Sh. Kesho Ram) filed a suit for possession by way of partition of alleged joint properties. It is the case of the plaintiffs that with the funds of Joint Hindu Family, three properties, namely, property no.228 in the name of defendant No.1, property no.280-281 in the name of Sh. Bishan Dass and property no.195-B in the name of Sh. Kesho Ram were purchased. Sh. Shiva Dass son of Sh. Ram Singh filed a previous suit for possession by way of partition with respect to property no.195-B. The suit was dismissed on 17.04.1990. However, in first appeal, the judgment and decree passed by the trial Court was reversed. The Court found that the aforesaid property is joint and therefore, liable to be partition.

The Regular Second Appeal as well as Special Leave to Appeal

before the Supreme Court was dismissed. The plaintiff claims that since defendant no.1 has now filed an application for preparation of final decree therefore, he is filing the suit with respect to properties no.228, 280-281.

The defendants contested the suit claiming that the aforesaid properties are exclusive properties of the respective defendants.

Both the Courts on appreciation of evidence, have found that properties no.228, 280-281 are not joint properties. The plaintiff failed to lead evidence to prove that the aforesaid properties were purchased with Joint Hindu Family funds. With respect to property no.195-B, plaintiff Sh. Gulab Rai admitted that the same was allotted to late Sh. Ram Singh, common ancestor of the parties. The plaintiff relied upon the family settlement deed Ex.P1, which is alleged to have been signed by Sh. Netu Ram (son of Kalu Ram), Sh. Maluka (son of Sh.Ram Singh) and Sh. Kesho Ram, but the plaintiff did not assert these facts in the plaint.

The learned counsel representing the appellant contends that once the partition of property no.195-B has been ordered, therefore, the remaining properties should also be presumed to be joint, purchased with the funds of the Joint Hindu Family. It is evident that property no.228, is owned by defendant no.1, in the record, whereas property no.280-281 is owned by Sh. Bishan Dass.

In the absence of cogent evidence to prove that these properties were purchased with the funds of the Joint Hindu Family, this Court does not find it appropriate to interfere with the concurrent findings of fact. The learned counsel representing the parties have failed to produce even the judgments passed by the Courts, in the previous round.

Consequently, the appeal is dismissed.

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

May 11, 2022
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(ANIL KSHETARPAL)
JUDGE

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