

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

(1) RSA-5211-2018 (O&M)

Madhubala and another

...Appellants

Versus

Kunti Devi and others

...Respondents

(2) RSA-5217-2018 (O&M)

Madhubala and another

...Appellants

Versus

Bhagwan and others

...Respondents

Date of Pronouncement:-21.12.2022

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Satbir Singh Kanwar, Advocate for the appellants.

H.S. MADAAN, J.

By this judgment, I intend to dispose of above mentioned two appeals arising out of the same judgment.

2. Briefly stated facts of the case are that plaintiffs Madhubala, daughter and Darshna Devi, wife of Sh. Bhagwan son of Parma Nand, both resident of Village Kharak Kala, Tehsil & District Bhiwani had brought a suit for declaration against Sh. Bhagwan and others on the averments that suit land measuring 20K-18M situated

at Village Kharak Kala, Tehsil & District Bhiwani had been a joint Hindu family ancestral property in the hands of Sh. Bhagwan- defendant No.1, who is father of plaintiff No.1 and husband of plaintiff No.2; Sh. Bhagwan had inherited the suit land from his father Sh. Parma Nand, vide mutation No.4689 dated 08.06.1986, therefore, the plaintiffs have got a right in the suit land; defendants No.2 to 8 taking advantage of defendant No.1 being addicted to drinking procured a sale deed bearing No.3951 dated 02.08.2010 from defendant No.1; according to the plaintiffs, the sale deed is without consideration; defendant No.1 had alienated the suit land without any legal necessity; the possession of the suit land is still with the plaintiffs; the plaintiffs prayed for setting aside the impugned sale deed dated 02.08.2010 and subsequent mutation; they also craved for issuance of decree of permanent injunction restraining defendants No.2 to 8 from interfering in possession of the plaintiffs over the suit land.

3. Notice of the suit was given to the defendants. Defendant No.1 had put in appearance in the Court but subsequently absented, as such, vide order dated 11.06.2011, he was proceeded against ex parte.

4. Defendants No.2 to 8 filed a joint written statement, claiming that they are bona fide purchasers for consideration without notice of suit land, which according to them is not ancestral. As per

version of answering defendants, Sh. Bhagwan had sold the suit land for a sum of Rs.18,29,000/- for the purpose of extension of his business as well as clearance of his debts. The plaintiffs were consenting party to the sale deed and mutation on the basis of Jalsa-a-Aam (public meeting) without any objection having been raised by the plaintiffs. According to the answering defendants, in fact the suit land was inherited by Sh. Bhagwan from his father Parma Nand, who had acquired occupancy rights in the suit land. He became owner of the suit land by way of occupancy rights, in that way, the suit land in hand of Parma Nand was his self acquired property and it cannot be termed as ancestral property. The defendants contended that they are in possession of the suit land.

5. Plaintiffs filed replication to the written statement denying the allegations therein, whereas, reiterating the averments in the plaint.

6. On pleadings of the parties, the following issues were framed:-

1. Whether the plaintiffs are entitled for the relief of declaration as well as permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiffs is not maintainable in this present form? OPD.
3. Whether the plaintiffs have no cause of action and no locus-standi to file the present suit? OPD.
4. Whether the plaintiffs have not come to the court with clean hands? OPD.
5. Whether the suit of the plaintiffs is bad for non-joinder and mis-joinder of necessary parties? OPD

6. Whether the plaintiffs are estopped by their own act and conduct to file the present suit? OPD.

7. Relief.

7. Parties led evidence in support of their respective claims.

8. After hearing arguments, the trial Court decided issue No.1 partly in favour of the plaintiffs, restraining the contesting defendants No.2 to 8 from interfering in possession of the plaintiffs over joint khata bearing khewat No.385/372, kitte 6 measuring 41K-16M situated within the revenue estate of village Kharak Kala, Tehsil & District Bhiwani as per jamabandi for the year 2006-07 without getting the same partitioned. Issues No.2 to 6 were decided as being not pressed. As a result of finding on issue No.1, the suit of the plaintiffs was decreed partly with costs. This was so done, vide judgment and decree dated 09.09.2014.

9. Both the parties were not satisfied with the judgment and decree passed by the trial Court and they had filed separate appeals before District Judge, Bhiwani. The appeal filed by plaintiffs Madhubala and Darshna Devi Vs. Bhagwan and others bearing Civil Appeal No.127-2014 as well as appeal filed by defendant Smt. Kunti Devi and others Vs. Madhubala and others bearing Civil Appeal No.128-2014 were disposed of, vide a single judgment and decree dt. 24.07.2018, passed by Addl. District Judge, Bhiwani, whereby the Civil Appeal No.127-2014 was dismissed and Civil Appeal No.128-

2014 was allowed and the judgment and decree passed by the trial Court was set aside and suit of the plaintiffs was dismissed.

10. As such, the plaintiffs have knocked at the door of this Court, by way of filing Regular Second Appeals, which concern the same subject matter having arisen out of single judgment and decree passed by learned ADJ, Bhiwani.

11. I have heard learned counsel for the appellants besides going through the record.

12. The moot question to be seen is as to whether the suit land in hands of defendant No.1 Bhagwan, father of plaintiff Madhubala and husband of plaintiff No.2 Smt. Darshna Devi, has the nature of joint Hindu family ancestral property or it is to be taken as self acquired property of Sh. Bhagwan. Since Sh. Bhagwan had acquired the property from his father Sh. Parma Nand, the nature of his ownership and possession is also to be looked into. Even as per own case of appellants, previously Sh. Parma Nand was in occupation of the suit land as tenant and he had acquired ownership rights therein at a later stage. The trial Court has analyzed this point in a very elaborate and detailed manner, observing that Sh. Parma Nand had become owner in possession of the suit land by virtue of vesting of Proprietary Rights Act, which is evident from the copy of mutation No.2590 dt. 16.12.1952 Ex.P16. Relying upon authority titled as **Ram Kumar Vs. Partap Singh & Ors.** 1987 Shimla LJ 684 and **Faqiria & Ors. Vs. Mst. Rajo & Anr.** 1956, PLR, Vol. LVII

194, the trial Court has drawn an inference that Sh. Parma Nand is to be taken as absolute owner of the property and after his death, since his son Sh. Bhagwan had succeeded to his estate in terms of Section 8 of the Hindu Succession Act, 1956, the property so acquired by Sh. Bhagwan is also to be treated as his self acquired property and not ancestral property, therefore, the plaintiffs cannot claim to have any pre-existing right in the suit property. Defendant No.1 Bhagwan being absolute owner of the suit property could very well execute the sale deed qua that in favour of defendants No.2 to 8 and no fault can be found with the same, with ancestral nature of the suit property qua plaintiffs being not proved, the plaintiffs have no locus standi to challenge the said sale deed, contending that the same was executed without legal necessity and without consideration. As far as the sale deed being for consideration, in the very recital of the sale deed, it is mentioned that it was being executed for a sum of Rs.18,29,000/- for the purpose of extension of business and clearing of debts by vendor Sh. Bhagwan. No reason is there to doubt such recital, more particularly, when till date, Sh. Bhagwan has not agitated the matter at any forum that he had not received the consideration amount qua the sale deed and it was got executed from him by playing fraud and cheating. Therefore, the suit filed by the plaintiffs was rightly dismissed by the Ist Appellate Court. Though, the trial Court had granted relief of permanent injunction to the plaintiffs in the process

decreeing the suit of the plaintiffs partly but as it comes out, the plaintiffs were unable to make a case for grant of permanent injunction. It has to be taken note of that the suit land is still joint and it measures 41K-16M. After death of Parma Nand, ½ share of the land was inherited by defendant No.1 Bhagwan and the remaining ½ share went to mother of Parma Nand, who had executed release deed in favour of plaintiff No.1 Madhubala regarding ½ share. The impugned sale deed in favour of defendants No.2 to 8 is to the extent of ½ share of Sh. Bhagwan, therefore, the relief of permanent injunction granted to the plaintiffs by the trial Court was rightly withdrawn by Ist Appellate Court of Addl. District Judge, Bhiwani. The judgment passed by Addl. District Judge, Bhiwani is quite detailed, well reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for intervention by this Court by accepting the Regular Second Appeals. No substantial question of law arises in these appeals. The same are found to be without merit and are dismissed accordingly.

21.12.2022
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No