

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

RSA-2174-2019 (O&M)
Date of Decision: 28.11.2023

Dilbagh Singh

...Appellant

Versus

Garja and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. J.P. Rana, Advocate for the appellant.

HARKESH MANUJA, J. (Oral)

1. By way of present appeal, challenge has been made to the judgments and decrees dated 30.05.2015 and 18.09.2018, passed by the Courts below, whereby a suit for declaration and permanent injunction, filed at the instance of appellant/plaintiff No.2 as well as respondent No.10/plaintiff No.1, assailing the validity of release deed dated 13.01.2004 executed by Garja-defendant No.1/respondent No.1 in favour of his sons i.e. respondent Nos.2 to 4 and his nephew-respondent No.5/defendant No.5, followed by a subsequent sale deed dated 27.07.2011 executed by his sons in favour of respondent No.6/defendant No.6, stands dismissed.
2. Briefly stating, claiming the suit property in hands of Garja to be ancestral, in nature, appellant/plaintiff No.2 along with

respondent No.10/plaintiff No.1 being plaintiffs sought declaration, assailing the release deed dated 13.01.2004 executed by Garja in favour of his sons and nephew besides the subsequent sale deed dated 27.07.2011 executed by sons of Garja in favour of respondent No.6/defendant No.6.

3. In the written statement, the stand taken by Garja and his sons was that the suit property was never ancestral but self owned/acquired property of Garja in his hands. Respondent No.6/defendant No.6 raised a plea of bona fide purchaser having got sale deed dated 27.07.2011 executed in her favour, based on mutation No.1562 dated 10.02.2004 recorded in favour of her vendors.

4. The trial Court vide judgment and decree dated 30.05.2015 dismissed the suit filed at the instance of plaintiffs. Aggrieved thereof, first appeal was filed, however, the same was also dismissed by the Appellate Court vide judgment and decree dated 18.09.2018.

5. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for appellant/plaintiff No.2 submits that the factum of suit property in hands of Garja was admitted being ancestral in nature, in view of specific recital being made to this effect in release deed dated 13.01.2004 and thus, the parties to it were bound by the said admission as regards the nature of the suit property. He further submits that once the suit property was admitted to be ancestral in the hands of Garja, he was having no authority in law to

alienate the same, except for want of legal necessity which was totally missing in the present case. No other argument has been addressed.

6. I have heard learned counsel for the appellant and gone through the paper-book. I am unable to find substance in the submissions made on behalf of appellant/plaintiff No.2.

7. Mere recital as regards the nature of suit property being ancestral in the hands of Garja, in the release deed dated 13.01.2004 cannot determine the nature of suit property, which has to be established through revenue excerpts, which have not been produced or proved on record by appellant/plaintiff No.2. The nature of the suit property being ancestral or non-ancestral cannot be determined merely on the basis of admission, as the same has to be established on record through revenue entries only. Thus, once appellant/plaintiff No.2 as well as respondent No.10/plaintiff No.1 failed to prove the nature of the suit property to be ancestral in hands of Garja by producing the revenue excerpts, suit filed at their instance was rightly dismissed by the Courts below, thereby warranting no interference with the concurrent findings of facts recorded in the aforementioned judgments and decrees.

8. Moreover, once the sale deed dated 27.07.2011 executed in favour of respondent No.6/defendant No.6 by her vendors was post a registered release deed dated 13.01.2004 followed by mutation No.1562 dated 10.02.2004 and respondent No.6/defendant No.6 having verified the factum regarding ownership of the property purchased by

her, the same being a bona fide transaction was sufficiently proved on record and was rightly upheld.

9. In view of the discussion made hereinabove, finding no illegality or perversity with the concurrent findings of facts recorded by the Courts below, there being no overlooking of the material available on record, re-appreciation of pleadings and the evidence being impermissible, the present appeal being devoid of merits is thus, dismissed.

10. Pending application(s), if any, shall stand(s) disposed of.

28.11.2023

Mangal Singh

(HARKESH MANUJA)
JUDGE

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No