

RSA-961-2020 (O&M)

- 1 -

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

112

**RSA-961-2020 (O&M)
Decided on : 13.07.2023**

Hitender

. . . Appellant(s)

Versus

Kamlesh Rani and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. R.K. Agnihotri, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)**CM-3140-C-2020**

This is an application filed under Order 22 rule 4 read with Section 151 CPC and under Rule-1, Chapter 1-C, volume 5 of High Court Rules & Orders, for seeking leave to implead the LR's of respondent No.2 - Mahavir Parsad.

In view of the averments made in the application, which is supported by an affidavit of appellant, prayer made in the application is allowed. Resultantly, legal representatives of defendant No.2, as detailed in para No.3 of the application are hereby impleaded as LR's/respondents in the present appeal.

CM stands disposed of.

RSA-961-2020 (O&M)

1. By way of present Regular Second Appeal (RSA), against the concurrent finding of facts given by both the Courts below, plaintiff – Hitender (appellant herein), submits that the Courts below have not taken note of the fact that sufficient evidence is available on record to hold the fact

that appellant (plaintiff) is in possession of the house in question.

2. Plaintiff – Hitender filed a suit for declaration and permanent injunction in regard to a residential House No.3474/1, Modal Town, Jhansa Road, Thanesar, District Kurukshetra, against Kamlesh Rani (defendant No.1) and Mahavir Parsad Rohila (defendant No.2), claiming it to be a Joint Hindu Family property, which is registered in the name of father of plaintiff (defendant No.2). It is pleaded that defendant No.2 sold-out said house to defendant No.1 vide impugned sale-deed No.2316, dated 13.05.2011 being *Karta* of Joint Hindu Family. In fact, at the time of execution of the sale-deed of the house, there was no legal necessity for the joint family and the house was sold-out without any consideration. Defendant No.2 is claimed to be a habitual drunker and a man of other vices. Thus, plaintiff challenged the said sale-deed being illegal, null & void and claimed consequential decree of permanent injunction.

3. Defendant No.2 filed separate written statement and pleaded that plaintiff has no *locus-standi* to challenge the sale-deed and clearly denied that the said house was a Joint Hindu Family Property, rather, same was sold-out with consideration and voluntarily by defendant No.2. Thus, he prayed for dismissal of the suit. Defendant No.2 died during the pendency of the suit after filing of the written statement.

4. While deciding issue Nos. 1 to 3, Ld. Trial Court reached to the conclusion that in support of the pleadings, plaintiff has not brought a single document to show that the suit house was purchased by his father i.e. defendant No.2 from any possible nucleus. It is admitted case of the plaintiff that his father (defendant No.2) was in service. It is also not the case of the plaintiff that his father purchased the said house with the aid and help of any ancestral property or with the aid or help of plaintiff's income.

In fact, Ld. trial Court reached to the conclusion that there is no *locus-standi* with the plaintiff to challenge the alienation done by his father for the self acquired property.

5. Even, it was found by the Ld. trial Court that the possession of the suit house was handed-over to the purchaser (defendant No.1) at the time of execution of the impugned sale-deed itself. Thus, plaintiff also failed to prove his possession over the suit property.

Said finding has also been affirmed by the Ld. Lower Appellate Court. Finding recorded by Ld. Lower Appellate Court in paragraphs No.15 to 18, is reproduced hereunder:-

“15. As per the case set up by the appellant, the suit property is the *Joint Hindu Family property but it was registered in the name of his father Mahavir Parshad. Since his father was drunkard and man of vices, therefore, taking advantage of his weaknesses, his son-in-law, Satish Kumar got executed sale deed in favour of respondent No.1 without any legal necessity and misappropriated the consideration. However, apart from oral testimony of appellant and witnesses examined by him, there is no documentary evidence on record to show or suggest that the suit property was purchased by his father out of nucleus of any joint family property in his possession or otherwise. Since, respondent No.1 Mahavir Parshad, father of the appellant was in service and has purchased property which was his self acquired property and thus, he had right to sell the same and respondent No.1 was not under any legal obligation to prove that the same was sold for legal necessity only by him.*

16. As far as question of possession is concerned, no doubt the appellant has placed on record photographs Ex.PW6/A and Ex.PW6/B but these photographs do not prove possession of appellant in any manner as the same do not bear any date from which it can be inferred that the same were clicked on a particular date after the sale deed in question. Moreover, though, the appellant claims to be in possession of entire suit property, however, a suggestion was put to DW1 that he (appellant) is occupying only one room in the house and the remaining portion is in her possession

only. This itself shows that the appellant is not in possession of the suit property.

17. Apart from this, the appellant and witnesses examined by him have admitted the fact that his father died in house situated at Kailash Nagar and his last ceremonies etc. were also performed in that house only. This itself shows that after selling the suit property to respondent No.1, the respondent No.2 handed over her possession and went to live in Kailash Nagar. This fact further give credence to recital in sale deed that possession had been handed over to the buyer i.e. defendant No.1.

18. The other piece of evidence relied upon by the appellant to prove his possession are Aadhar card of his sister Ex.P2, his aadhar card Ex.P4, electricity bills Ex.P7 and Ex.P8, water bill Ex.P9 and receipt of payment of water bill Ex.P10. However, these documents pertains to the year 2012 and are rather in favour of appellant's father. On the other hand, respondent No.1 has proved on record assessment register Ex.D1 to Ex.D4 to prove that her ownership and possession over the suit property is reflected in Municipal Committee record thereafter and her name is also substituted in record of Electricity Department and proved on record documents Ex.D5 and Ex.D6 in this regard. Therefore, from the above discussed evidence, it is proved on record that it is the respondent No.1 and not appellant who is in possession of house in dispute.”

6. I have heard learned counsel for the appellants and perused the relevant record.

7. There is concurrent finding in regard to the fact that the house in question was a self acquired property by defendant No.2, and there is not an *iota* of evidence to prove that in any manner said house could be linked with the income of the Joint Hindu Family, and also the fact that plaintiff is not held to be in possession of the disputed house. Thus, I do not find any reason to interfere in the well reasoned factual findings given by the Ld. Courts below. Even, counsel for the appellants has failed to refer any law point or perversity arising from the impugned judgments passed by the Ld.

RSA-961-2020 (O&M)

- 5 -

Courts below.

Thus, for the reasons recorded herein-above, the instant appeal being devoid of merits, stands dismissed. The judgments & decrees passed by both the Courts below are affirmed.

(SANJAY VASHISTH)
JUDGE

July 13, 2023
J.Ram

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