

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

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2023:PHHC:116104

RSA-1018-2020

Date of decision: 04.09.2023

DAYA RAM AND ANR

..Appellants

Versus

**SHEELA (DECEASED) THROUGH LRS
AND ORS**

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate
for the appellants.

ANIL KSHETARPAL, J(Oral)

1. This is plaintiffs second appeal to challenge the correctness of the concurrent findings of fact arrived at by the Courts below. While dismissing his suit for grant of decree of declaration that mutation No.2588 sanctioned on 26.06.1999 and the sale deed No.7193 dated 31.12.2007, is illegal, null and void.

2. In order to comprehend, the controversy involved in the present appeal, some relevant facts, in brief, are required to be noticed.

3. Late Sh. Shera was predecessor in interest of the plaintiffs as well as defendant No.2 to 5. Sh. Shera left behind as many as 6 class I legal heirs (a widow, two sons and three daughters). On his death, the property was mutated as per Section 8 of the Hindu Succession Act, 1956, to the extent of 1/6th share in favour of each class I heirs. In the year 2003, Smt. Phoola, plaintiff No.3 and widow of late Sh. Shera executed a Will in favour of plaintiff No.1 with respect to her 1/6th share. Thereafter, Smt. Savitri defendant No.5 (daughter of late Sh. Shera) transferred her 1/6th share in favour of plaintiff No.1 vide registered transfer deed dated 19.07.2007. Smt.

Barhma, another daughter of late Sh. Shera sold her 10 kanal in favour of

defendant No.1, Smt. Sheela, who is an outsider in the family of late Sh. Shera vide sale deed dated 31.12.2007. The plaintiffs namely two sons of late Sh. Shera and Smt. Phoola widow of late Sh. Shera filed the present suit claiming that the suit property is ancestral joint hindu family and coparcenary property and therefore, the daughters of late Sh. Shera has 1/24th share each. The Courts below have dismissed the suit on the ground that the same has been filed after the prescribed period of limitation and the plaintiff No.1 has filed the suit after receiving 1/6th share from Smt. Savitri vide transfer deed dated 19.07.2007. The Court has also held that Smt. Phoola has also executed a Will with respect to her 1/6th share in favour of plaintiff No.1 on 03.03.2004. Thus, both the Courts have formed the concurrent opinion that the plaintiffs have filed the suit only when Smt. Barhma sold 10 kanal land in favour of Smt. Sheela, who is an outsider.

4. This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.

5. The learned counsel representing the appellant contends that both the Courts have held that the property is ancestral and therefore, the share of the sisters would be 1/24th each and not 1/6th.

6. This Court has considered the submissions of the learned counsel representing the appellant.

7. From the facts noted above, it is obvious that the plaintiff has filed the suit only to nullify the sale deed executed by Smt. Barhma. Sh. Shera died in the year 1999, whereas, the suit has been filed in the year 2008 and that also after Smt. Barhma had executed the sale deed.

8. In view of the aforesaid fact and discussion, no ground to interfere is made out.
9. Dismissed accordingly.
10. All the pending miscellaneous applications, if any, are also disposed of.

September 04th, 2023
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(ANIL KSHETARPAL)
JUDGE

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