

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

RSA-2299-1992 (O&M)

Date of decision: 27.01.2023

Karnail Singh and others

...Appellants

Versus

Kulwinder and others

...Respondents

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

Present: None.

H.S. MADAAN, J.

Nobody has put in appearance on behalf of the parties. The appeal is of the year 1992, therefore, I proceed to decide it after going through the record.

2. Briefly stated facts of the case are that plaintiffs Kulwinder and Jaswinder both minor sons of Shingara Singh son of late Lachhman Singh through their mother Smt. Chhindo had brought a suit against defendants Shingara Singh and others seeking a declaration that the land in suit situated in the area of Village Lohgarh, Tehsil Phillaur, fully described in the headnote of the plaint is joint Hindu family ancestral property and the plaintiffs are in joint possession of the suit land to the extent of 1/3 share each.

According to the plaintiffs, sale deeds dated 31.01.1985 and 06.02.1985 executed by their father Shingara Singh-defendant

No.1 in favour of defendant No.2 Jaswant Singh and defendant No.3 Bakshish Singh and sale deed dated 08.07.1986 in favour of defendant No.4 Dalbir Singh, sale deed dated 08.07.1986 in favour of defendant No.5 Bakshish Singh, sale deed dated 13.08.1986 in favour of defendant No.6 Karnail Singh are null and void.

As per case of the plaintiffs, they along with their father Shingara Singh, formed a Joint Hindu Family and the suit land is ancestral qua plaintiffs and defendant No.1. A few years before filing of the suit, relations between the plaintiffs and defendant No.1 became strained, as such, the plaintiffs along with their mother had to shift to the parental place of their mother and since then they are residing there. Shingara Singh-defendant No.1 had sold the suit property to defendants No.2 to 6, vide various sale deeds, which he could not do as he had no legal necessity of doing so and the alienation were not made for the benefit of the estate. Plaintiffs had called upon defendant No.1 to admit their claim but to no effect, as such, they had brought the suit in question.

3. On getting notice, defendant No.1 had appeared and filed a written statement, contesting the suit, denying the allegations levelled in the plaint. Defendant No.1 claimed himself to be exclusive owner of the suit property with which plaintiffs have no right or concern. According to defendant No.1, he had alienated the suit property for legal necessity in order to pay the amount of decrees obtained by the

plaintiffs and their mother Smt. Chhindo against such defendant. Defendant No.1 defended the sale deeds as legal and valid documents. Refuting the remaining assertions, such defendant brought for dismissal of the suit.

4. Defendant No.3 had not appeared in the Court despite service, as such, was proceeded against ex parte, whereas, defendants No.2, 4 and 6 did put in appearance but failed to file any written statement.

5. Plaintiffs filed replication to the written statement submitted by defendant No.1 controverting the allegations therein, whereas reiterating the averments in the plaint.

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

1. Whether the disputed property is joint Hindu family/ancestral property of the parties, if so, its effect? OPP.
2. Issue No.1 is proved, whether the sale deeds dated 31.01.1985 and 06.02.1985 in favour of defendants No.2 and 3 were executed by defendant No.1 for consideration and legal necessity? OPD.
3. Whether the sale deeds dated 08.07.1986 and 13.08.1986 in favour of defendants No.4 to 6 were executed by defendant No.1 for consideration and legal necessity? OPD.
4. Whether the plaintiffs have got no locus standi to file the present suit? OPD.
5. Whether the suit as framed is not maintainable? OPD
6. Whether the plaintiffs are estopped by their act and

conduct to file the present suit? OPD.

7. Relief.

7. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

8. After hearing arguments, the trial Court of Sub Judge, Ist Class, Phillaur, on deep and thorough analysis of the evidence brought on file by the parties, in the light of pleadings and settled law on the subject, decided issue No.1 in favour of the plaintiffs and against the defendants, holding the suit property to be ancestral in nature; issues No.2 and 3 were decided against the plaintiffs and in favour of the defendants, holding that the impugned sale deeds executed by defendant No.1 in favour of defendants No.2 and 3 were illegal being without legal necessity and as such were not sustainable. With regard to sale deeds executed by defendant No.1 dated 13.08.1986 and 08.07.1986 in favour of defendants No.4 to 6, those were held to be valid being for legal necessity; issues No.4 to 6 were not decided as being not pressed by learned counsel for the parties during the course of arguments, therefore, decided against the defendants. Resultantly, vide judgment and decree dated 31.05.1988, suit of the plaintiffs was dismissed.

9. Feeling aggrieved by such judgment and decree passed by the trial Court, the plaintiffs had filed an appeal before District Judge, Jalandhar. That appeal was assigned to Addl. District Judge, Jalandhar,

who vide judgment and decree dated 05.09.1992 accepted the appeal partly, inasmuch as the sale deeds dated 08.07.1986 and 13.08.1986 in favour of defendants No.4 to 6 executed by defendant No.1 Shingara Singh were declared as null and void without consideration and respondent No.1 was restrained from alienating the land by way of sale, mortgage whereas claim of the plaintiffs in respect of other sale deeds dated 31.01.1985 and 06.02.1985 was dismissed.

10. Feeling dissatisfied with such judgment and decree, defendants Karnail Singh, Shingara Singh and Dalbir Singh have approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondent/plaintiffs, who had put in appearance through counsel initially but subsequently, both the parties had not put in appearance.

11. I have gone through the record and I find that the rejection of the claim of plaintiffs by the trial Court in toto was incorrect and not justified. The trial Court relying upon judgment dated 02.05.1985 in suit titled as 'Kulwinder Singh & Ors. Vs. Shingara Singh & Ors.' for permanent injunction restraining the defendants from alienating the suit land which was subject matter of the present suit except for legal necessity and benefit of estate; in that suit, an issue was framed whether the land in suit is joint Hindu family coparcenary property of the parties to the suit. Vide judgment dated 02.05.1985, that issue was decided in favour of the plaintiffs, holding that the suit land is ancestral property of the parties. This judgment had become final between the

parties, since no appeal had been filed by either of the parties against that judgment. Thus, applying doctrine of res judicata in terms of Section 11 CPC, the trial Court held that the suit property was ancestral coparcenary property qua the plaintiffs and defendant No.1. In view of such findings on issue No.1, the trial Court while deciding issue No.2 observed that the contention of plaintiffs that sale deeds dated 31.01.1985 and 06.02.1985 by defendant No.1 in favour of defendants No.2 and 3 are illegal, being without legal necessity, do not hold good and fall to the ground in terms of Order 2 Rule 2 CPC except that the suit had been filed on 05.03.1985 and after execution of sale deeds in question and as per Order 2 Rule 2 CPC all the reliefs to which one is entitled should be claimed in one and the same suit.

Similarly, sale deeds dated 13.08.1986 and 08.07.1986 were not declared to be illegal, null and void. The trial Court had dismissed the civil suit filed by the plaintiffs.

However, the Ist Appellate Court by minute and through analysis of the evidence adduced by the parties, their pleadings, observed that in the earlier litigation between the parties, Shingara Singh was specifically restrained from alienating the suit property except for legal necessity, vide judgment and decree dated 02.05.1985 by then Sub Judge, however, Shingara Singh had shown disregard by way of executing fresh sale deeds on 08.07.1986 Mark 'C', dated 31.10.1986 Mark 'D' as well 13.08.1986 Mark 'E' and there was

nothing on record to show that those were not executed by defendant No.1 for legal necessity and for consideration. But with regard to sale deeds Mark A dated 31.01.1985 and Mark B dated 06.02.1985 which were executed by Shingara Singh much prior to passing of decree Ex.P2, there was nothing on record to show that those sale deeds were executed by Shingara Singh in spite of directions issued by the trial Court restraining him from alienating the land because the said act was already done by him before passing of the decree whereas with regard to sale deeds Mark C, D and E, which were executed by Shingara Singh after passing of decree for permanent injunction against himself with the civil Court having given findings that the suit is ancestral property and Shingara Singh having been restrained from alienating the same then any alienation made by defendant Shingara Singh was a sham transaction, having no legal force and the plaintiffs are not bound by the same. It was observed that it seems that Shingara Singh had executed bogus sale deeds in order to deprive the plaintiffs of their right to inherit the property or to reap the fruits of the same. Resultantly, the appeal had been accepted partly as detailed above.

12. The judgment passed by the Ist Appellate Court of Addl. District Judge, Jalandhar is quite detailed, well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. The judgment and decree passed by the trial Court which had been passed in a perverse and arbitrary manner were rightly set aside. I

do not see any reason to interfere with the judgment passed by the Ist Appellate Court. The same does not suffer from any illegality or infirmity. No substantial question of law arises in this appeal. The appeal stands dismissed accordingly.

27.01.2023
sumit.k

(H.S. MADAAN)
JUDGE

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