

2023:PHHC:143654
**137 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-2781-2023 (O&M)
Date of decision: 09.11.2023

Ishwar

....Appellant

Versus

Santosh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rohit Mittal, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by the courts below, while dismissing the plaintiff's suit for grant of decree of declaration to the effect that they are owners in possession of the joint ancestral suit property. They have also sought decree of declaration that the sale deed executed by defendant no.3, in favour of defendant no.1 and 2, on 04.06.2014, is illegal, null and void and not binding on the rights of the plaintiffs, with a consequential relief of permanent injunction restraining the defendants from alienating the suit property. In substance, the plaintiffs have filed a suit against their father Sheotaj Singh. The sale deed executed by their father in favour of defendant no.1 and 2 has also been challenged. Defendant no.3, while filing the written statement, pleaded that he was taken to

Tehsil Complex and on account of misrepresentation the sale deed has been executed.

2. On the other hand, defendant no.1 and 2, while filing the written statement, claimed that defendant no.3 previously entered into an agreement to sell on 30.05.2010, in favour of Vikram, nephew of defendant no.2 and 3. Both the courts, on appreciation of evidence, have found that the plaintiff has failed to prove that the suit property was ancestral.

3. Learned counsel representing the appellant contends that Sh.Jaswant Singh, the husband of defendant no.2 admitted that he has not been authorized by any power of attorney by his wife executed in his favour. He submits that the deposition of Sh.Jaswant Singh cannot be read as evidence.

4. This Court has considered the submissions made by the learned counsel representing appellant. Sh.Jaswant Singh is husband of defendant no.2. He had the knowledge of the facts of the case. He appeared as a witness. Such witness cannot be excluded from consideration only because he does not have any power of attorney executed from his wife in his favour. Sh.Jaswant Singh is closely related to Ms.Sushma Devi. Hence, he has appeared in evidence.

5. Learned counsel representing the appellant did not raise any other argument.

6. Keeping in view the aforesaid facts, no ground to interfere is made out.

7. Hence, dismissed.

8. All the pending miscellaneous applications, if any, are also disposed of.

09.11.2023

rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No