

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

RSA-66-2013(O&M)

Date of decision:-18.1.2023

Naveen

...Appellant

Versus

Sushila and others

...Respondents

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

Present: Mr.Nitish Garg, Legal Aid Counsel
for the appellant.

Mr.B.K. Bagri, Advocate
for respondents No.1 to 3.

Mr.Sushil Sheoran, Advocate
for respondents No.7 and 8.

H.S. MADAAN, J.

1. Briefly summed up, the facts of the case as per the version of the plaintiff are that Sh.Ramsawrup – defendant No.4 son of Sh.Tek Chand constituted a joint Hindu family along with his wife Smt.Bharpai, daughters Sushila, Sumitra and Munni (defendants No.1 to 3) and sons Jaipal and Jaibir (defendants No.5 and 6) besides Sh.Umrao, who had predeceased him. The plaintiff Naveen – minor

is son of Umrao pre deceased son of Ramsawrup, who is unfortunately mentally unsound and has filed the present suit through his mother and natural guardian Smt. Shakuntala.

2. As per the case of the plaintiff, Ramsawrup along with wife and children constituted a joint Hindu family of which he was Karta; Ramsawrup had married of all his three daughters defendants No.1 to 3, who are residing in their respective matrimonial houses; the property mentioned in para No.3 of the plaint is joint Hindu family coparcenary property qua plaintiff and defendants No.4 to 6, which they had inherited from their ancestors; defendants No.1 to 3 had no right, title or concern therewith; defendant No.4 was not competent to transfer the suit land in favour of defendants No.1 to 3, however, after death of father of the plaintiff, defendant No.4 in collusion with other defendants transferred the property in favour of his daughters defendants No.1 to 3 in order to deprive the plaintiff from his valuable right; defendant No.4 had executed a release deed No.781 dated 6.8.2007 in favour of his daughters, defendants No.1 to 3 and mutation No.1011 was sanctioned on the basis of that release deed.

3. The plaintiff had brought a suit seeking a declaration that the suit land is joint Hindu family coparcenary property of the plaintiff and defendants No.4 to 6 in which the plaintiff has right to the extent of 1/4th share, whereas defendants No.4 to 6 having

remaining 3/4 share in equal shares and defendants No.1 to 3 have no interest therein, as such release deed No.781 dated 6.8.2007 and mutation No.1011 sanctioned on its basis and other revenue records are illegal, null and void not binding upon the rights of the plaintiff, besides seeking a decree for permanent injunction restraining defendants No.1 to 4 from alienating the land of the share of the plaintiff i.e. 1/4th on the basis of wrong release deed dated 6.8.2007.

4. On getting notice, defendants put in appearance. Defendants No.1 to 3 filed a joint written statement taking preliminary objections that suit is not maintainable; no cause of action arose to the plaintiff to bring the suit; the plaintiff has no locus standi to file the suit; the plaintiff has not approached the Court with clean hands. On merits, the answering defendants contended that their father Ramsawrup was aged 68 years not keeping good health, whereas their mother was suffering from the disease of cancer for last several years; on account of service rendered by answering defendants, their father Ramsawrup defendant No.4 had executed a release deed qua the suit land in favour of answering defendants; defendants No.5 and 6 sons of Ramsawrup did not look after him and his wife during old age and their ailments and rather had been residing separately.

5. Defendant No.4 filed written statement on similar lines as that of defendants No.1 to 3.

The defendants prayed for dismissal of the suit.

Defendants No.5 and 6 had not appeared to offer a contest, as such were proceeded against ex-parte.

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

1. Whether the suit land was ancestral and coparcenary property between plaintiff and defendants No.4 to 6? OPP.
2. Whether the impugned release deed dated 6.8.2007 is illegal and revenue entries are liable to be corrected? OPP.
3. Whether the plaintiff is owner in possession of 1/4th share in the suit land? OPP.
4. Whether the plaintiff was no cause of action or locus standi to file the present suit? OPD.
5. Relief.

7. Both the parties led evidence in support of their respective claims.

During the course of evidence of plaintiff, he examined Hoshiar Singh as PW1. Shakuntla the mother of the plaintiff got her statement recorded as PW2, who reiterated on oath the case of the plaintiff as given in the plaint.

In rebuttal, the defendant No.1 Sushila got her statement recorded as DW1 and reiterated the version as given in the written statement.

8. After hearing learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of plaintiff and against the defendants, issues No.3 and 4 in favour of the plaintiff and against defendants. Resultantly, suit of the plaintiff was decreed to the effect that he is owner in possession of his share of total suit land and the release deed No.781 dated 6.8.2007 qua the entire suit land in favour of defendants No.1 to 3 and mutation No.1011 sanctioned on its basis, were declared as illegal, null and void and not binding on the rights of the plaintiff. This was so done vide judgment and decree dated 11.6.2010.

9. Feeling aggrieved by the said judgment and decree, the defendants No.1 to 3 and defendants No.5 and 6 had filed separate appeals in the Court of District Judge, Bhiwani, which were assigned to Additional District Judge, Bhiwani, who vide common judgment and decree dated 7.9.2012 held the release deed dated 6.8.2007 beyond 1/7th share of Ramsawrup as illegal and findings of the trial Court on issues No.1 and 2 are modified holding that the suit property in between sons and daughters of Ramsawrup since deceased and Ramsawrup himself was ancestral and coparcenary property in which all of them were entitled to get 1/7th share each, however, the 1/7th share of Umrao Singh, predeceased son of Ramsawrup will go to Naveen plaintiff and other legal heirs of Umrao Singh in equal shares, whereas 1/7th share of each daughter

of Ramsawrup i.e. Sushila, Sumitra and Munni will go to them and 1/7th share each will go to other sons of Ramsawrup namely Jaipal and Jaibir and share of Ramsawrup himself will devolve upon Sushila, Sumitra and Munni daughters of deceased Ramsawrup in whose favour he had already executed release deed Ex.P6 which will be deemed to be the deed to the extent of 1/7th share of deceased Ramsawrup in the suit property. Therefore, plaintiff Naveen was not found entitled to get 1/4th share in the suit property rather he was found entitled to get equal share in 1/7th share of his deceased father Umrao Singh as per the spirit of Hindu Succession Act. Consequently the suit of the plaintiff was partly decreed and partly dismissed observing that the plaintiff was entitled to get equal share in 1/7th share of his deceased father Umrao Singh in the suit property, which is ancestral and coparcenary property whereas daughters of deceased Ramsawrup, namely Sushila, Sumitra, Munni and other sons of Ramsawrup namely Jaipal and Jaibir will get 1/7th share each in the suit property being coparceners therein whereas the 1/7th share of deceased Ramsawrup shall devolve amongst the daughters of Ramsawrup in equal shares in view of the release deed Ex.P6. As such release deed dated 6.8.2007 was partly declared to be valid document to the extent of 1/7th share of Ramsawrup but beyond that share it is declared to be null and void, as such mutation sanctioned on the basis of release deed was set aside being illegal, to be

corrected in accordance with the shares of the parties.

10. Now it was the turn of the plaintiff to feel dissatisfied with the judgment and decree passed by Additional District Judge, Bhiwani and he has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgment and decree passed by Additional District Judge, Bhiwani be set aside and the suit filed by him be decreed.

11. On getting notice of regular second appeal, the respondents have appeared before this Court through counsel.

12. I have heard learned counsel for the parties besides going through the record.

13. In this case the relationship between the parties inter se and with Sh.Ramsawrup deceased is not in dispute, so is the fact that Umrao father of the plaintiff Naveen had predeceased his father Ramsawrup and he is survived by his wife Smt.Shakuntla and minor son Naveen, who is mentally challenged. Both the Courts on analysis of the evidence adduced by the parties in light of their pleadings have returned the finding that the suit land in name of Ramsawrup was joint Hindu family ancestral coparcenary property. The trial Court was of the view that Ramsawrup along with his three sons had pre existing right in the suit land with which the defendants No.1 to 3, who are married daughters have no concern, as such Ramsawrup could not have alienated any portion out of the suit land in the form

of release deed in favour of his daughters defendants No.1 to 3. Ramsawrup had died during the pendency of the suit. The trial Court did not find sufficient evidence to show that he had executed the release deed for legal necessity i.e. to bear expenses for his treatment and that of his wife. As such, the release deed was declared to be null and void so was the mutation sanctioned on the basis thereof. The plaintiff was found entitled to have $1/4^{\text{th}}$ share in the suit land.

14. However, in appeal learned Additional District Judge, Bhiwani although agreed with the trial Court with regard to the nature of the suit land being ancestral coparcenary which was in the name of Ramsawrup being Karta of the Hindu joint family but took notice of the fact that release deed had been executed by Ramsawrup on 6.8.2007, which was after coming into being of amendment in the Hindu Succession Act, 1956 in the year 2005 vide which sons and daughters of Hindu family are taken as coparceners in equal shares in the ancestral property in terms of Section 6(1) of Hindu Succession Act, 1956. In that way, Ramsawrup along with his three sons and three daughters are $1/7^{\text{th}}$ share each in the suit property and Ramsawrup was competent to execute the release deed to the extent of $1/7^{\text{th}}$ share only and not more than that. Therefore, the release deed executed by Ramsawrup for land more than $1/7^{\text{th}}$ share was declared to be null and void so was the mutation sanctioned on the basis thereof. The finding recorded by the trial Court was modified in that

regard.

15. After giving a thoughtful consideration to the rival contentions, I find that the First Appellate Court of Additional District Judge, Bhiwani was justified in taking such view in the matter and modifying the judgment and decree passed by the trial Court. There is no illegality or infirmity in such view taken by learned Additional District Judge, Bhiwani and no interference therewith in the regular second appeal by this Court is called for.

16. No substantial question of law arises in this appeal.

17. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

18.1.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No