

RSA-1014-2018 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1014 of 2018 (O&M)
Reserved on : 10.05.2023
Date of Decision : 01.06.2023

Joginder SinghAppellant

VERSUS

Sudesh Rani and OthersRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vijay Singh Kaajla, Advocate for the appellants.

ALKA SARIN, J.

CM-2532-C-2018

This is an application for condonation of delay of 55 days in
refiling the appeal.

For the reasons stated in the application, delay of 55 days in
refiling the appeal is condoned.

CM stands disposed off.

RSA No.1014 of 2018

1. The present appeal has been preferred against the judgments
and decrees dated 20.10.2015 and 06.04.2017 passed by the Courts below
dismissing the counter-claim filed by the defendant No.3-appellant.

2. The brief facts relevant to the present *lis* are that the defendant-respondent Nos.3 and 4 are the brothers of the plaintiff-respondent Nos.1 and 2. The plaintiff-respondent Nos.1 and 2 filed the present suit for declaration to the effect that they are the owners of the land in dispute being members of Joint Hindu Family and legal heirs of Hira Devi, their mother, to the extent of 1/4th share each, alongwith defendant-respondent Nos.3 and 4 and that the agreement to sell and civil court decree dated 29.08.1987, 10.06.1993 and decree dated 27.04.1989, mutations, release deeds dated 26.03.2004 etc. are illegal null and void, non existence, collusive and not bindings on the rights of the plaintiff-respondent Nos.1 and 2 and further for joint possession of the suit land along with the other co-members of Joint Hindu Family i.e. defendant-respondent Nos.3 and 4. As per the plaintiff-respondent Nos.1 and 2 their mother, Hira Devi, was the owner in possession of the suit land by pre-emption vide civil court decree passed in civil suit no.391 and mutation no.268 attested on 30.04.1969 and that the suit land had been pre-empted by Hira Devi in her name from the funds of the Joint Hindu Family as a member of the Joint Hindu Family. It was averred that the plaintiff-respondent Nos.1 and 2, defendant-respondent Nos.3 and 4 alongwith their father, Pyare Lal, and their mother, Hira Devi, were the members of a Joint Hindu Family and that Hira Devi had no right to alienate/transfer the suit land to any one in any manner without the consent and permission of all the members of the Joint Hindu Family. It was stated that Hira Devi had expired on 13.07.2005 while her husband, Pyare Lal, had already expired on 29.05.1979 and that the plaintiff-respondent Nos.1 and 2 and defendant-respondent Nos.3 and 4 are the legal heirs of

Hira Devi and Pyare Lal and have succeeded to the suit land in equal shares. As per the plaintiff-respondent Nos.1 and 2, Hira Devi had entered into some agreement for sale with defendant No.4 regarding the suit land and had suffered a civil court decree for specific performance of agreement vide judgment and decree dated 29.08.1987 and a registered sale deed had been got executed and attested in the name of defendant No.4 on 27.04.1989 for a consideration of Rs.37,000/- under the said civil court decree. Mutation no.403 had also been attested as per the said decree. Hira Devi had also suffered a collusive civil court decree dated 10.06.1983 regarding the suit land in the names of defendant-respondent Nos.3 and 4 and mutation no.404 had been entered for the said decree but was rejected and that defendant-respondent Nos.3 and 4 had further suffered a civil court decree dated 17.04.1989 in favour of defendant No.3-appellant. It was averred that Chhaju Ram (defendant No.4) had further released 2/3 share in the suit land i.e. land measuring 32 kanals 17 marlas in favour of defendant Nos.5 and 6 vide release deed dated 26.03.2004. All the above said alienations/transfer/release/civil court decree regarding the suit land are wrong, illegal, null and void, non existent, in-effective, collusive and are not binding upon the rights of the plaintiff-respondent Nos.1 and 2 in the suit lands being members of Joint Hindu Family. Hence, the suit.

3. The defendant No.3-appellant, defendant Nos.4, 5 and 6 appeared before the Trial Court. The defendant-respondent Nos.3 and 4 were proceeded against ex-parte. In his written statement defendant No.3-appellant raised preliminary objections regarding maintainability, cause of action, locus standi etc. The defendant No.3-appellant asserted himself to

being owner in possession of the suit land on the basis of the civil court decree dated 27.04.1989 in his favour. It was submitted that defendant-respondent Nos.3 and 4 were the original owners in possession of the suit land on the strength of a civil court decree dated 13.06.1983 passed in their favour and that both of them subsequently suffered a decree dated 27.04.1989 in favour of the defendant No.3-appellant. As per defendant No.3-appellant the decree dated 29.08.1987 and consequent sale deed dated 27.04.1989 suffered by Hira Devi in the case of specific performance filed by Chhaju Ram (defendant No.4) was in collusion with each other and that the said decree was not binding upon the rights of defendant No.3-appellant as he was not party to the said litigation and neither Hira Devi nor her two sons (defendant-respondent Nos.3 and 4) disclosed about the pendency of the suit for specific performance filed by Chhaju Ram (defendant No.4). Since the suit land was pre-empted by Hira Devi out of her own funds, she had every right to alienate/transfer/dispose of the suit land in any manner she desired. The existence of a Joint Hindu family was denied.

4. Defendant No.3-appellant also filed a counter-claim asserting himself to being owner in possession of the suit land on the basis of civil court decree dated 27.4.1989 suffered in his favour by the then owners defendant-respondent Nos.3 and 4. In the counter-claim it was prayed that a decree for declaration be passed in favour of defendant No.3-appellant and he be declared as owner in possession of the suit land and the decree passed in favour of Chhaju Ram (defendant No.4) and consequent sale deed, mutation and release deed executed by Chhaju Ram (defendant No.4) in favour of defendant Nos.5 and 6 be declared illegal, null and void.

5. Replication was filed. The Trial Court framed the following issues :

1. Whether the subject property of the suit was Joint Hindu Family in the hands of Hira Devi ? OPP
2. Whether the Civil Court decree dated 29.08.1987, 10.06.1983, 27.04.1989 and release deed dated 26.03.2004 are illegal, void and ab-initio and not binding on the rights of the plaintiffs ? OPP
3. Whether the plaintiffs are owner to the extent of 1/4th share each alongwith defendant No.1 & 2 in the entire property ? OPP
4. Whether the defendant No. 3 is owner on the basis of decree dated 17.04.1989 ? OPD
5. Whether the suit is not maintainable ? OPD
6. Whether the plaintiffs have intentionally concealed the material facts from the court ? OPD
7. Relief.

6. On the basis of the pleadings of the parties and the evidence on the record, the Trial Court dismissed the suit of the plaintiff-respondent Nos.1 and 2 vide judgment and decree dated 20.10.2015. The counter-claim of defendant No.3-appellant was also dismissed. Aggrieved by the decision of the Trial Court dismissing his counter-claim, an appeal was preferred by the defendant No.3-appellant which appeal was also dismissed vide judgment and decree dated 06.04.2017. Hence, the present regular second appeal.

7. Learned counsel for the defendant No.3-appellant would contend that the Courts below have erred in dismissing his counter-claim on illegal and erroneous grounds and that the defendant No.3-appellant was a legal and lawful owner of the suit land and thus entitled to the declaration sought in the counter-claim.

8. I have heard learned counsel for the defendant No.3-appellant.

9. In the present case both the Courts below have concurrently non-suited the defendant No.3-appellant. The Trial Court found that the litigation between Hira Devi and her sons (defendant-respondent Nos.3 and 4) and then between the sons (defendant-respondent Nos.3 and 4) and the defendant No.3-appellant was collusive so as to avoid the liability of Hira Devi of her transaction with Chhaju Ram (defendant No.4). The discussion by the Courts below reveals that multifarious litigations were initiated by the plaintiff-respondent Nos.1 and 2 and by the defendant-respondent Nos.3 and 4 so as to somehow ensure that Chhaju Ram (defendant No.4) did not reap the fruits of the agreement to sell in his favour which agreement to sell had infact culminated in a decree in his favour. Thus, the defendant No.3-appellant cannot stake any claim of ownership and possession over the suit land and his counter-claim has rightly been rejected. The defendant No.3-appellant, apart from bald oral assertions, has not been able to disprove and dislodge the findings of both the Courts.

10. In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. The concurrent findings of fact recorded by both the Courts below do not call for any interference by this Court. No question of law, much less any substantial

question of law, arises in the present case. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

01.06.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO