

RSA-2230-2018 (O&M)

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247-1
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2230 of 2018 (O&M)
Reserved on : 10.05.2023
Date of Decision : 01.06.2023

Sudesh Rani and AnotherAppellants

VERSUS

Ajit Singh and OthersRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Dalel Singh Nain, Advocate for the appellants.

ALKA SARIN, J.

CM-6028-C-2018

This is an application for condonation of delay of 114 days in
refiling the appeal.

For the reasons stated in the application, delay of 114 days in
refiling the appeal is condoned.

CM stands disposed off.

RSA No.2230 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 suit filed by the plaintiff-appellants.

2. The brief facts relevant to the present *lis* are that the defendant-respondent Nos.1 and 2 are the brothers of the plaintiff-appellants. The plaintiff-appellants filed the present suit for declaration to the effect that the plaintiff-appellants 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.1 and 2 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-appellants and further for joint possession of the suit land along with the other co-members of Joint Hindu Family i.e. defendant-respondent Nos.1 and 2. As per the plaintiff-appellants 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-appellants, defendant-respondent Nos.1 and 2 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-appellants and defendant-respondent Nos.1 and 2 are the legal heirs of Hira Devi and Pyare Lal and have succeeded to the suit land in equal shares. As

per the plaintiff-appellants, 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.1 and 2 and mutation no.404 had been entered for the said decree but was rejected and that defendant-respondent Nos.1 and 2 had further suffered a civil court decree dated 17.04.1989 in favour of defendant No.3. It was averred that 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, ineffective, collusive and are not binding upon the rights of the plaintiff-appellants in the suit lands being members of Joint Hindu Family. Hence, the suit.

3. Defendant Nos.3, 4, 5 and 6 appeared before the Trial Court. Defendant-respondent Nos.1 and 2 were proceeded against ex-parte. In his written statement defendant No.3 raised preliminary objections regarding maintainability, cause of action, locus standi etc. Defendant No.3 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 defendant-

respondent Nos.1 and 2 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. As per defendant No.3 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 as he was not party to the said litigation and neither Hira Devi nor her two sons (defendant-respondent Nos.1 and 2) 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 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.1 and 2. In the counter-claim it was prayed that a decree for declaration be passed in favour of defendant No.3 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-appellants vide judgment and decree dated 20.10.2015. The counter-claim of defendant No.3 was also dismissed. The Trial Court inter-alia found that the plaintiff-appellants had failed to prove that the suit land was purchased out of any Joint Hindu Family Funds. The Trial Court also held that since the suit land had been pre-empted by Hira Devi she was absolute owner thereof and could deal with it in any way thought proper. The suit was held to being a collusive suit between the plaintiff-appellants, their brothers defendant-respondent Nos.1 and 2 and defendant No.3. The suit was also held to be

time-barred. Aggrieved by the decision of the Trial Court, an appeal was preferred by the plaintiff-appellants which appeal was also dismissed vide judgment and decree dated 06.04.2017. Hence, the present regular second appeal.

7. Learned counsel for the plaintiff-appellants would contend that the Courts below have erred in dismissing their suit on illegal and erroneous grounds and that Hira Devi had no right to alienate the suit land it having been purchased from the funds of the Joint Hindu Family. It is also contended that the suit was within limitation and the Courts below have erred in dismissing it on the ground of limitation.

8. I have heard learned counsel for the plaintiff-appellants.

9. In the present case both the Courts below have concurrently non-suited the plaintiff-appellants. The argument raised by learned counsel for the plaintiff-appellants that their mother, Hira Devi, had no right to alienate the suit land it having been purchased from the funds of the Joint Hindu Family is liable to be rejected as this argument was not raised before the First Appellate Court. A perusal of the judgement passed by the First Appellate Court reveals that the only point argued before it was regarding limitation which was decided against the plaintiff-appellants. The First Appellate Court thereafter in para 20 noted that "*No other material point was argued before me*". Even in the grounds of appeal before this Court the plaintiff-appellants have not contended that this noting by the First Appellate Court is incorrect and that they had raised other arguments before it. This Court is, therefore, unable to accept the argument regarding Joint Hindu Family funds being raised now by the plaintiff-appellants. The plaintiff-

appellants, apart from bald oral assertions, have not been able to disprove and dislodge the findings of both the Courts that the suit was beyond limitation. The suit was clearly beyond limitation as held by both the Courts below.

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