

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.107

Case No. : R. S. A. No. 2436 of 2018

Date of Decision : September 06, 2023

Ved Parkash

.... Appellant

vs.

Narayan @ Narayan Dass
(since deceased) through his LRs
and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Arun Sharma, Advocate
for the appellant.

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GURBIR SINGH, J. :

1. **CM No.6457-C of 2018** : This is application under Section 151 CPC for condonation of delay of 104 days in re-filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 104 days in re-filing the present appeal is condoned. The application stands disposed of.

2. **Main Appeal** : The present appeal has been filed against the concurrent judgments passed by both the Courts below.

3. The plaintiff-appellant (hereinafter referred to as – the plaintiff) filed a suit for declaration that he is owner in possession of the land measuring 11 kanals being 220/1120 share of land measuring 56 kanals, situated in Village Jagdhauli, Tehsil Jagadhri, District Yamuna Nagar (for short – the suit land), along with all rights appurtenant thereto and the sale deed dated 08.10.2007, executed by defendant no.1 in collusion with

defendants no.2 and 3 in favour of defendants no.4 to 6 is illegal, null and void and not binding upon the rights of the plaintiff, with consequential relief of permanent injunction restraining the defendants from alienating the suit land and also from interfering in the peaceful possession and ownership right of the plaintiff over the suit land.

4. The case of the plaintiff is that defendant no.1 is his father and defendants no.2 and 3 are his real brothers. The suit land was allotted to defendant no.1 and his brother Antu in equal shares, vide order dated 07.02.1985, being surplus land. The instalments of the same were deposited by the plaintiff and defendants no.1 to 3 from ancestral and Joint Hindu Family Funds as they all were residing together. On 03.08.2007, an oral family settlement was arrived at between the parties to the suit. The suit land was given to the plaintiff and possession of the same was handed over to the plaintiff as owner. Since then, the plaintiff has been owner in possession of the suit land and has also pre-existing right in the same. Defendant no.1 gave an application to the police. The matter was compromised on 05.08.2007 and defendant no.1 made statement that he had partitioned the property amongst his three sons and a memorandum of partition was also reduced into writing. Defendant no.1 failed to get the necessary changes done in the revenue record. Defendant no.1 filed suit for injunction against the plaintiff and defendants no.2 and 3. The plaintiff appeared in the said suit but defendant no.1 withdrew that suit on 05.10.2007 and submitted compromise Ex.C-X by alleging that defendants no.1 to 3 have compromised the matter, whereas such a compromise is illegal, null and void being not within the knowledge of the plaintiff.

Defendant no.1, in collusion with defendants no.2 and 3, also executed sale deed dated 08.10.2007 of the land measuring 02 kanals 10 marlas in favour of defendants no.4 to 6. The alleged sale deed is also illegal, null and void.

5. Defendants no.1 to 3 contested the suit and denied the suit property to be ancestral joint Hindu family property. It was admitted that the suit land was surplus land and was allotted to defendant no.1 and his brother Antu. Defendant no.1 disowned the plaintiff and his wife from his movable and immovable property and publication was also got done in the newspaper in this regard. It was further pleaded that plaintiff did not have any pre-existing right in the suit land. Neither any family settlement took place nor any memorandum of partition was ever executed.

6. Defendants no.4 to 6 also contested the suit and submitted that they had purchased the suit land from Antu – brother of defendant no.1 vide sale deed dated 31.05.2004 for consideration and some other land also from Antu Ram and defendant no.1 vide sale deed dated 31.05.2004. They also purchased land measuring 02 kanals 10 marlas from defendant no.1 vide sale deed dated 08.10.2007, which is legal and valid and also got possession of suit land.

7. Heard.

8. After framing of issues, parties led their evidence. On the basis of evidence led on the file, the Courts below held that the suit land along with some other land was the self-acquired property of defendant no.1 Narayan and he, being absolute owner in possession of the suit land, was competent to execute and get registered the sale deed in favour of defendants no.4 to 6. Accordingly, he executed the sale deed and got the same

registered. The property was allotted to defendant no.1 and his brother being surplus land. They paid the instalments themselves with their hard labour and became owner of the property. The Courts below have rightly held that the suit property is not proved to be ancestral property. Thus, it is the self-acquired property and plaintiff has no pre-existing right in this property. So, defendant no.1 could transfer the suit property in any manner he liked. The plaintiff has failed to prove the alleged oral family settlement dated 03.08.2007. In the alleged family settlement (Ex.P-1), other family members, Savitri – wife and Ram Murti – daughter of Narayana were not joined. The said family settlement cannot be said to be executed as per law. No right is vested in the plaintiff on the basis of said family settlement. So, both the Courts below have rightly not placed reliance on the said document.

9. The findings recorded by both the Courts below are based on proper appreciation of evidence and do not suffer from any perversity or illegality. No question of law, much less any substantial question of law, arises for determination in the instant second appeal. The appeal is without any merit and is accordingly dismissed in limine.

10. Pending applications, if any, shall stand disposed of along with this judgment.

September 06, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.