

RSA-787 of 2018 (O&M)

2023:PHHC:119554

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

RSA-787 of 2018 (O&M)

Date of decision: 12.09.2023

Lakshay Chaudhary

.....Appellant

Versus

Randhir Singh @ Ranbir and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Vikas Kumar Rana, Advocate,
for Mr. Rakesh Nehra, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 31.01.2017 passed by the Court of learned Civil Judge (Junior Division), Mewat, whereby suit of the appellant-plaintiff for declaration and possession with permanent injunction was dismissed as well as against the judgment and decree dated 06.09.2017 passed by the Court of learned District Judge, Mewat, vide which the appeal filed by the appellant-plaintiff against the judgment and decree of the trial Court, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that plaintiff filed a suit for declaration and possession with permanent injunction pleading therein that defendant No.1 was the holder of joint Hindu ancestral property bearing Khewat/Khata No. 142/164, Rect. No.

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35, Killa No.11/2(3-2), 20(8-0), Rect. No.36, Killa No.15/2(2-19), 16(7-12), Rect. No.38, Killa No.1(5- 12), 2(8-0), 3/1(3-16), 8/2(3-16), 9/1(1-4), Rect. No.45, Killa No.10/2(4- 8), 11(7-11), 20/1(4-18), Rect. No.54, Killa No.21/11/2(0-1), Khasra No. 208(0-19), total measuring 62 Kanal 08 Marla to the extent of 1/8th share which comes to 7 Kanal 16 Marla, Khewat/Khata No.134/156, Rect. No.42, Killa No.3/1(3-7), 7(7-9), 8/1(6-0), 8/2(2-0) total measuring 18 Kanal 16 Marla to the extent of 1/8th share which comes to 2 Kanal 07 Marla, Khewat/Khata No.513/615, Rect. No.77, Killa No.15/3(2-7), 16/1(3-13) which comes to 6 Kanal 00 Marla to the extent of 1/4th share which comes to 1 Kanal 10 Marla, Khewat/Khata No.490/591, Rect. No.77, Killa No.14(8-0), 15/2(1-17), Rect. No.92, Killa No.6(7-12), 7/1(5- 0) total measuring 22 Kanal 09 Marla to the extent of 1/8th share which comes to 2 Kanal 6 Marla and Khewat/Khata No.511/613, Rect. No.92, Killa No.27 area measuring 1 Kanal 4 Marla to the extent of 1/160th share which comes to grand total measuring 14 Kanal 9 Marla situated within the revenue state of village Jaurashi, Tehsil Tauru, District Mewat and defendant No.1 is grandfather of the plaintiff who is Karta of Joint Hindu Family. It has been submitted that father of the plaintiff died on 9.8.2006 leaving behind him as his only son and Smt. Manju as his widow but after the death of father of plaintiff, defendant No.1 became dishonest and in order to deprive the plaintiff from his birth right of inheritance in the suit land, was adamant and threatening the plaintiff without any reason and necessity. It has been further submitted that defendant No.1 was not competent to deprive the plaintiff from his

right in the suit land and in this regard, plaintiff filed civil suit No. 369 of 2009 through his mother for permanent injunction restraining defendant No.1 from alienating the suit land wherein both the parties were directed to maintain *status quo* regarding existing position of the suit land but the mother of the plaintiff remarried with someone at Tauru after death of father of the plaintiff and she failed to protect the rights of the plaintiff and due to her nonappearance, the suit was dismissed in default and restoration application of that suit is pending. It has further been submitted that on 21.11.2014 defendant No.1 effected sale deed bearing vasika No. 2050 dated 21.11.2014 in favour of defendant No.2 and transferred the suit land in favour of defendant No.2 without any sale consideration and the impugned sale deed is without any legal necessity and is a sham paper transaction. It has been further submitted that defendant No.2 was not in a position to make the payment of Rs.75,00,000/- for sale consideration and therefore, the impugned sale deed is wrong, illegal, null and void and not binding upon the rights of the plaintiff and also does not create any right, title or interest in favour of defendant No.2.

3. On notice, defendant No.1 appeared and filed written statement raising certain objections regarding maintainability, *locus standi*, cause of action, estoppel and concealment of true and material facts etc. On merits, it has been submitted that land in question is not ancestral but it is self acquired land of defendant No.1. It has been submitted that defendant No.1 was having only one son namely Inder Singh and he was married with Smt. Manju but the relations of Manju

and Inder Singh were not good as Manju was having illicit relation with different persons and she fled away from the house of defendant No.1 and after the death of Inder Singh, Manju got remarried with another person and Lakshay Chaudhary also went away with her leaving behind defendant No.1 alone and there is no care taker of defendant No.1 as he is suffering from many diseases being old aged person and he has no source of income, so, for legal necessity defendant No.1 sold out the land in question. It has been further submitted that sale deed bearing vasika No. 2050 of 2014 is legal and valid document and defendant No.1 was fully competent to execute the sale deed in favour of defendant No.2. Rest all the averments of the plaint were specifically denied and dismissal of the suit was prayed for.

4. Defendant No.2 appeared and filed separate written statement in which certain objections regarding maintainability, *locus standi*, cause of action, estoppel and concealment of true and material facts etc. were pleaded. On merits, it has been submitted that land in question is not ancestral land but it is self acquired land of defendant No.1. It has been submitted that defendant No.1 is suffering from many diseases due to old age and he was not having any source of income, so just for better treatment and other expenses, defendant No.1 sold out the land in question for legal necessity and he was fully competent to alienate the land in question. It has further been submitted that sale deed bearing vasika No. 2050 of 2014 is legal and valid document and defendant No.2 is a bona fide purchaser of the suit land as she purchased the suit land from defendant No.1 after inspecting the title as

well as revenue record and in this regard, defendant No.2 paid whole sale price to defendant No.1 and defendant No.2 is owner in possession of the suit land. Rest all the averments of the plaint were specifically denied and dismissal of the suit was prayed for.

5. Replication to the written statements was not filed. From the pleadings of the parties, following issues were framed by the trial Court: -

1. Whether the plaintiff is entitled to a decree of declaration as prayed for? OPP
 2. Whether the suit of the plaintiff is not maintainable in the eyes of law? OPD
 3. Whether the plaintiff has no cause of action to file the present suit? OPD
 4. Whether the plaintiff has no *locus standi* to file the present suit? OPD
 5. Whether the plaintiff is estopped from filing the present suit by his own conduct, omission and commission? OPD
 6. Whether the suit of plaintiff is bad for mis joinder and non joinder of necessary parties? OPD
 7. Whether the plaintiff has concealed the true and material facts from this Court? OPD
 8. Relief.
6. Parties led oral as well as documentary evidence in support of their respective contentions.
7. After hearing arguments and after appreciating evidence on record, trial Court dismissed the suit of plaintiff vide judgment and decree dated 31.01.2017.

8. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 06.09.2017.

9. Learned counsel for the appellant contended that judgments and decrees passed by the Courts below are totally perverse and not binding upon the appellant. He further contended that the suit filed by the appellant has wrongly been dismissed on the ground that a simplicitor suit for declaration is not maintainable as per Section 34 of the Specific Relief Act. He further contended that both the Courts below have completely ignored the evidence on record. He further contended that the First Appellate Court has wrongly reversed the finding of the trial Court qua ancestral nature of the suit property. He further contended that the judgments and decrees of the Courts below being perverse are liable to be set aside.

10. Claim of the appellant-plaintiff is that he has got right in the suit property by birth as the suit property in the hands of defendant No.1 was ancestral property being inherited by defendant No.1 from his common ancestor Bhagmal and suit property has been sold without legal necessity and it was a sham transaction and sale deed has been executed without consideration as defendant No.2 is wife of nephew of defendant No.1. However, appellant-plaintiff has failed to prove that property in the hands of defendant No.1 is ancestral property as no revenue record in support of his claim was produced by the appellant. Further the appellant has failed to prove that the property was once held by Bhagmal and defendant No.1 received the same by inheritance and

by no other means. To prove the property to be ancestral, the parties have to show that it was owned by the common ancestor, and that it descended to the party or parties concerned by inheritance and in no other manner. Even it is not proved by the appellant that suit property in the name of defendant No.1 was received by him by way of inheritance. Moreover, Bhagmal is shown to have two daughters Khajani and Chhota and two sons namely Paltu and Dalip Singh and as per mutation Ex.P19, his property was inherited by not only Paltu and Dalip Singh but the daughters of Bhagmal namely Khajani and Chhota and his widow Dhapa and thus, the property has been inherited by legal heirs of Bhagmal as per section 8 of the Hindu Succession Act. It is well settled that a son who inherits his father's assets under section 8 of the Act does so in his individual capacity and not as a Karta of the Hindu Undivided Family. Furthermore, as per mutation Ex.P22 defendant No.1-Randhir Singh inherited the share of his mother vide mutation No. 2106 Ex.P22 and share so received by defendant No.1 was not from male Hindu rather it was from a female. So, the property in the hands of Randhir cannot be held to be ancestral property. Thus, the First Appellate Court has rightly observed that plaintiff has failed to prove that property in the hands of defendant No.1 is ancestral property rather it can be presumed that it was self acquired property and Randhir being owner of self acquired property, was in a position to sell that land to the person of his choice.

11. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show

that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

12. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

13. In view of the above, present appeal is dismissed.

14. Pending application(s), if any, stand disposed of accordingly.

12.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No