

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-197-2019 (O&M)****Reserved on : 05.11.2024****Pronounced on : 19.11.2024**

Paramjit Singh

....Appellant

VERSUS

Jarnail Singh & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Dheeraj Mahajan, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant against the judgements and decrees dated 15.11.2016 and 27.09.2018 passed by the Trial Court and the First Appellate Court dismissing his suit for declaration with consequential relief of joint possession.

2. The suit was filed by the plaintiff-appellant averring that the suit land is ancestral and coparcenary property in the hands of Deepo @ Dalip Singh as he had inherited the same from his forefathers. The said Deepo @ Dalip Singh had three sons - Balwant Singh, Swaran Singh and Kirpal Singh. Balwant Singh had died leaving behind the plaintiff-appellant, defendant no.5 and Jatinder Singh being his sons and his estate was inherited by them. Jatinder Singh had also died and his estate had devolved upon defendant Nos.6 and 7. Balwant Singh had 1/3rd share in the suit land and same was inherited by the plaintiff-appellant and defendant no.5 and Jatinder Singh in equal shares. Swaran Singh had also died and his share had

devolved upon defendant Nos.1 to 3 in equal shares being his sons. Plaintiff-appellant, defendant Nos.6 and 7, Jatinder Singh and defendant No.4 are also co-sharers in the suit land by birth and Deepo @ Dalip Singh had no right to sell the same without legal necessity. However, Deepo had executed an alleged sale deed in favour of defendant Nos.1 to 3 which is illegal, invalid, without consideration and without any legal necessity and without the consent of the plaintiff-appellant, defendant Nos.6 and 7 and father of the plaintiff-appellant and the said sale deed is not binding upon the rights of the plaintiff-appellant. Hence, the present suit. In their written statement the defendant-respondents raised preliminary objections regarding maintainability, limitation, non-joinder of necessary parties, etc. On merits it was denied that Deepo @ Dalip Singh was not competent to execute the sale deed or that the sale deed in their favour was illegal. It was stated that Kulwinder Singh, the real brother of the plaintiff-appellant, was one of the attesting witness of the sale deed and that the suit was barred as the sale deed in question had already been upheld as a valid document in the previous suit titled as 'Kirpal Singh Vs Deepo @ Dalip Singh and Others' decided on 30.04.1999 wherein the relief of declaring the suit land as ancestral property had been claimed. The appeal against the decision dated 30.04.1999 had also been dismissed. It was also denied that Deepo @ Dalip Singh had no right to sell the suit land without legal necessity and that it had been held by the Civil Court that the suit land was the self acquired property of Dalip Singh and he was competent to sell the same in favour of defendant-respondent Nos. 1 to 3. Replication was filed wherein the contents of the written statement were denied and those of the plaint were reiterated.

3. From the pleadings of the parties following issues were framed :
- i. Whether the plaintiff is entitled for declaration as prayed for ? OPP
 - ii. Whether the plaintiff is entitled for consequential relief of joint possession as prayed for ? OPP
 - iii. Whether the suit of the plaintiff is hopelessly time barred ? OPD
 - iv. Whether the suit of the plaintiff is bad for non-joinder of the necessary parties ? OPD
 - v. Whether suit of the plaintiff is not maintainable in the present form ? OPD
 - vi. Whether the plaintiff is estopped by his act and conduct to file the present suit ? OPD
 - vii. Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction ? OPD
 - viii. Whether the plaintiff has got no locus standi to file the present suit ? OPD
 - ix. Relief
4. Vide judgement and decree dated 15.11.2016 the Trial Court dismissed the suit of the plaintiff-appellant. The appeal of the plaintiff-appellant was also dismissed by the First Appellate Court vide judgement and decree dated 27.09.2018. Hence, the present regular second appeal.
5. Learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing his suit. It is urged that the suit land

was joint Hindu family coparcenary property and Deepo @ Dalip Singh had no right to sell the same without any legal necessity.

6. Heard counsel for the plaintiff-appellant.

7. In the present case the plaintiff-appellant has been unable to prove that the suit land was joint Hindu family coparcenary property. Apart from the oral testimonies, the plaintiff-appellant could not establish from any documentary evidence that the suit land was coparcenary property. It was incumbent upon the plaintiff-appellant to prove that the suit land was inherited by Deepo @ Dalip Singh being the fourth generation in consequence of unbroken line of succession but the said link is missing in the present case. The revenue record has not corroborated the version of the plaintiff-appellant. Learned counsel for the plaintiff-appellant is unable to point to any cogent and reliable evidence on the record to show that the suit land was coparcenary property. In the absence of such reliable evidence, the findings recorded by both the Courts cannot be faulted. Further, the impugned sale deed has been upheld in an earlier suit vide judgment and decree. No other point was argued.

8. In view of the above, no mistake or error of law or facts can be found with the judgments and decrees passed by both the Courts. 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.

19.11.2024
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No