

RSA-699-1991(O&M)
Date of decision :03.04.2024

Vs.

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Mr. R.K. Sharma, Advocate
for respondents No. 4, 5 and 6.

3. Hamela died leaving behind his three sons, namely, Jati, Faqiria and Duni. Jati was unmarried and issueless. He sold his share of the property in favour of his nephew and wife of another nephew, namely, Beer Singh and Smt. Satya wife of Waryam Singh son of Faqiria.

3. The correctness of the aforesaid sale deed was challenged by the plaintiffs. In fact, Faqiria had seven sons and a daughter. As many as five sons and children of Faqiria's another son filed the suit claiming that the property is joint Hindu family, ancestral and co-parcenary property and therefore, Jati has no right to alienate the same. The trial Court decreed the suit, however, it was reversed by the First Appellate Court. The Regular Second Appeal filed by the plaintiffs was summarily dismissed. However, in Civil Appeal No.4632 of 1989, the Hon'ble Supreme Court vide order dated 15.11.1989, remitted the matter back to the First Appellate Court to decide the matter afresh. In compliance with the directions, the First Appellate Court has re-examined the matter and reversed the judgment and decree passed by the trial Court.

4. The correctness of the judgment passed by the First Appellate Court in the second round of litigation is subject matter of challenge in this Regular Second Appeal.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith the requisitioned record of the Lower Court.

6. Learned counsel representing the appellant submits that the First Appellate Court has once again committed the same error. He submits that the First Appellate Court has failed to examine the effect of co-parcenary between Hamela, Faqiria, Jati, and Duni and children of Faqiria. He further submits that the property is joint Hindu family property and the defendants have failed to prove that the sale deed was executed on payment of the sale consideration.

7. *Per contra*, learned counsel representing the respondents submits

that the plaintiffs have failed to prove that the property was co-parcenary property and Jati was last male holder. While relying upon paragraph 223 of Hindu Law by Mulla, 15th Edition, they submit that Jati died issueless and therefore, Jati was absolute owner.

8. This Court has considered the submissions of learned counsel representing the parties.

9. With respect to the first submission of the learned counsel representing the appellant, it will be noticed that the Hon'ble Supreme Court while remanding the matter back to the District Judge has made observations that the facts have not been investigated properly by the Courts below and no final expression has been made on the entire issue. Hence, the Hon'be Supreme Court's order is required to be read in that context.

10. Moreover, the plaintiffs have failed to lead evidence to prove that any co-parcenary existed between Hamela, his three sons and seven sons of Faqiria. PW2, while appearing in evidence has admitted that there was partition during the life time of Jati. This is the positive finding recorded by the First Appellate Court while accepting the appeal. There is no challenge to its correctness. Moreover, the First Appellate Court has observed that from the perusal of jamabandis for the year 1957-58 and 1961-62, it is evident that the share of the parties were separate and the share of children of Faqiria were also separate. It has also come on record that the parties are residing separately and some members of the family are in service. There is also no challenge to the correctness of findings of the First Appellate Court on the part of the appellant. Furthermore, it is noticed that the plaintiffs were required to prove that when

the co-parcenary came into existence particularly when the parties were recorded separate owners of the property.

11. With respect of the argument of learned counsel representing the plaintiffs that the payment of Rs. 10,000/- at the time of execution of the sale deed has not been proved, it will be noticed that the plaintiffs have no locus to challenge the sale deed on account of non-payment of sale consideration. Late Sh. Jati never disputed the payment. He acknowledged the receipt of the payment. Additionally, the sale deed resulted in transfer of title and even if the argument of learned counsel representing the plaintiffs is accepted, still the sale cannot be set aside on this count unless the sale was conditional.

12. It is clarified here that joint Hindu family does not necessarily result in joint Hindu family property. In this case, even existence of joint Hindu family is not proved, particularly when some parties are residing separately and some of them are in jobs.

13. Hence, no ground for interference is made out against the findings of the fact arrived at by the First Appellate Court.

14. Dismissed.

		(ANIL KSHETARPAL)	
		JUDGE	
03.04.2024	Whether speaking/reasoned :	Yes	No
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