

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

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2024:PHHC:018381

RSA-563-1994

Date of decision: 09.02.2024

HARDIAL SHARMA & ORS.

..Appellants

Versus

MURTI AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.D. Sharma, Advocate
for the appellant No.2.

Mr. Alok Mittal, Advocate
and Mr. Sylvester, Advocate
for respondent No.1 and 3.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the plaintiff through his legal representatives assails the correctness of the concurrent findings of fact arrived at by the Courts below while dismissing his suit for grant of decree of declaration that he is the exclusive owner in possession of the property and the defendants have no concern and the sale deeds dated 08.08.1986 and 10.09.1986, executed by the defendants are illegal, null and void.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Smt. Bhagi Devi daughter of Sh. Naraini Devi left behind six class I heirs namely her children Sh. Munshi Ram (plaintiff), Sh. Ved Prakash, Sh. Har Bhagwan, Sh. Dev Raj @ Balraj, Smt. Bhan Devi and Smt. Vidya Devi.

4. Sh. Ved Prakash died issueless. His share devolved upon his brothers and sisters i.e. in five shares. Subsequently, Smt. Bhan Devi died and her children were impleaded as defendant No.4 to 10. They executed a

power of attorney in favour of defendant No.1. Both the Courts on appreciation of evidence have found that the plaintiff is not the sole owner of the property and it is joint property between all the brothers and sisters.

5. In fact, while filing the suit, the plaintiff claimed that Sh. Dev Raj @ Sh. Balraj is already dead. Subsequently, Sh Dev Raj @ Sh. Balraj appeared in evidence and proved that he is still alive.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

7. The learned counsel representing the appellants submits that Ex.P-4 is a judgment passed in civil suit filed by Sh. Radha Krishan against Sh. Munshi Ram, whereas, Sh. Munshi Ram (plaintiff) was proved to be in possession of 51 kanal and 16 marlas. He further submits that Sh. Munshi Ram predecessor in interest of the appellants had redeemed 20 kanal land and therefore, he is the exclusive owner.

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

9. Admittedly, the defendants were not party to the judgment Ex.P-4. Hence, the same is not binding on them. As far as redemption of 20 kanal land by Sh. Munshi Ram would not elevate his status to the owner.

10. The joint property was mortgageed. One of the co-owner redeemed the same. He cannot claim that he became the exclusive owner.

11. Keeping in view the aforesaid facts, no ground to interfere is made out.

12. Dismissed accordingly.

13. All the pending miscellaneous applications, if any, are also disposed of.

February 09th, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*