



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

112

RSA-3079-2019 (O&M)**Date of Decision: 30.09.2024**

Subhan Khan

...Appellant

Versus

Smt. Hasni (dceased) through her LR and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Ravi Malik, Advocate, for
Mr. Sanjeev K. Panwar, Advocate, for the appellant.

VIKAS SURI, J.**CM-8254-C-2019**

This is an application under Section 151 CPC for condonation of delay of 74 days in re-filing the appeal.

For the reasons mentioned in the application, supported by affidavit of the counsel for the applicant-appellant, the application is allowed and the delay of 74 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA-3079-2019 (O&M)

1. This regular second appeal has been preferred by the plaintiff-appellant aggrieved by judgment and decree dated 17.07.2018 passed by learned Additional District Judge, Palwal, affirming the judgment and decree dated 06.11.2015 passed by Civil Judge (Junior Division), Hathin, whereby the suit preferred by him for declaration with a consequential relief of permanent injunction was dismissed.



2. The facts in brief are that the plaintiff-appellant filed a suit seeking declaration to the effect that sale deed bearing Vasika No.3624 executed by defendant No.1 in favour of defendant No.3 along with its mutation entry be declared as null and void and defendant No.3 be restrained from dispossessing him and alienating the suit land to any other person. It was pleaded that defendant No.1 has illegally alienated the suit property to her daughter (defendant No.3) vide aforesaid sale deed bearing Vasika No.3624 without the permission/consent of nearest collateral/plaintiff, as the suit property is an ancestral property and inherited by the husband of defendant No.1, who has since died.

2.1 Upon notice having been issued to the defendants, the suit was contested by filing written statement, taking preliminary objections on the maintainability of suit, non-joinder of necessary party, lack of cause of action, estoppel, lack of *locus standi*, concealment of facts etc. The stand taken by the defendants was that defendant No.1 was having limited estate and was in possession of her share in the suit property and she had sold her share to defendant No.3, by executing a valid and legal sale deed. Replication to the written statement was not filed by the plaintiff.

3. From the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is entitled to a decree for declaration to the effect that the sale deed bearing vasika no.3624 dated 28.12.2012 and subsequent mutation no.2075 are illegal, null and void ab-initio, ineffective, inoperative and not binding upon the inheritance or valuable rights of the plaintiffs over the suit land? OPP
2. Whether the plaintiff is entitled to a decree for



permanent injunction thereby restraining the defendant no.3 to dispossess the plaintiff from the suit property and further alienate the suit land to any person? OPP

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD

5. Whether the plaintiff is estopped by his own act and conduct from filing the instant suit? OPD

6. Relief.

4. On appraisal of the pleadings and the evidence led by the parties, the trial Court dismissed the suit. Aggrieved thereagainst, the plaintiff-appellant preferred statutory first appeal, which was also dismissed vide judgment and decree dated 17.07.2018 by recording concurrent findings.

5. Learned counsel for the appellants submits that both the Courts below have dismissed the suit as well as the statutory first appeal of the plaintiff-appellant illegally, arbitrarily and without appreciating the evidence brought on record. It is submitted that defendant No.1 inherited the ancestral property of her husband after his death and thus, could not alienate the same without the consent of the plaintiff/appellant as he is the brother of deceased husband of defendant No.1.

6. I have heard learned counsel for the appellant and with his able assistance, perused the record.

7. Admittedly, respondent No.1 inherited the suit property from her husband after his death. The case set up by the plaintiff-appellant is that respondent No.1 held the suit property as a limited estate and as per the custom of Meo community prevalent in District Gurgaon, she could not have



alienated the suit property without the consent of all the collaterals of her deceased husband and also without any legal necessity. Admittedly, the suit property was transferred vide sale deed dated 28.12.2012 to her daughter, i.e. respondent No.3. In order to succeed, the plaintiff was required to prove by leading cogent evidence (i) that the parties belong to Meo caste and the same is regulated by the customary law of Gurgaon district (now Gurugram), (ii) that the suit property inherited by respondent No.1 was ancestral land, (iii) that the alienation by way of sale deed dated 28.12.2012 was without any legal necessity.

8. The above three factual aspects which are germane to the issue at hand and go to the root of the controversy are factual aspects which were to be proved by cogent evidence. Both the Courts below after examining the entire evidence have returned concurrent findings of fact that the plaintiff-appellant has miserably failed to prove the aforesaid. The relevant findings returned by the lower Appellate Court are contained in paras 11 to 15 which are reproduced hereunder for convenience:

“11. Appreciating the matter on record, it can be observed that primarily the question to be determined is if parties are regulated by custom under which defendant No.1 being widow had restricted right in respect of suit property and the alienation by her in favour of defendant no.3 can be challenged by the plaintiff being collateral of last male holder.

12. As a matter of record, it comes up as admitted from the oral evidence of the parties that defendant No.1 had succeeded to suit property as widow of Mangal son of Abdulla. Plaintiff is Subhan Khan son of Abdulla, thus, is brother of husband of defendant no.1. The judgments which counsel for plaintiff has relied when considered for



their legal consequence as precedent primarily require that there should be a proved custom of the nature claimed by the plaintiff. Certainly, custom can be proved by written or oral evidence. However, when the matter on record is considered, it comes up that plaintiff has pleaded about existence of custom and the parties are regulated by the said custom. But when defendant No.1 appeared as a witness, she has not been confronted with any such custom. It was very fundamental requirement that the defendant No.1 as DW4 being illiterate should have been examined with regard to the fact that the parties belong to Meos caste which is regulated by customary law of Gurugram District. The circumstances should have been brought on record to exhibit that all the matters of personal law including marriage parties were being regulated by customary law of Gurugram District and not their religious personal law. In the absence of the same on the basis of application of customary law, plaintiff cannot succeed.

13. Even otherwise, the right vests in a widow according to customary law of Gurugram District to alienate the property with the consent of her husband's relatives or to alienate for legal necessary and well consideration. The cross-examination of defendant No.1 Smt. Hasni shows that she has been cross-examined at length with regard to fact if at all she has received any sale consideration. She claims to have received the sale consideration from defendant No.3 who happens to be her daughter. The copy of the sale deed Ex.D1 shows that at the time of registration of document, it was mentioned before the Sub Registrar that they had already received the sale consideration. The onus was on the plaintiff to establish lack of consideration once defendant No.1 admitted on oath that she had received the sale consideration. No circumstances have been extracted out of cross-examination of defendant No.1 Smt. Hasni or the husband of subsequent purchaser defendant No.3 Shokat



appeared as DW2. Defendant No.1 Smt. Hasni in her cross-examination has explained that she has been residing with her daughter. She also explained that she had received medical treatment and also married her daughter.

14. Now there is nothing on record to show that defendant No.1 was residing with plaintiff wherein plaintiff was taking care of defendant No.1. Customary rights plaintiff has claimed do not arise out of any contract or statute and to establish breach of customary rights, plaintiff was required to establish that whatever legal necessity defendant No.1 had cited did not exist and the same could have been had plaintiff pleaded and established that defendant No.1 was maintaining herself from any other known resources or was dependant upon plaintiff or any other collateral of deceased husband. In the absence of same whatever sale consideration she received was for sustaining herself and to fulfill her legal necessity. Thus, at one hand, the plea of customary right is not established, on the other hand, defendant No.1 having sold property for legal necessity to sustain herself is established by preponderance of all probability.

15. Learned lower court has also reached finding that plaintiff failed to prove that parties are governed by customary law. Plaintiff also failed to prove with documents that suit property was ancestral in nature, so strictly speaking the claim of custom is not applicable. Learned lower court has rightly decided issue No.1 and 2 against the plaintiff.”

9. A perusal of the aforesaid would show that the plaintiff-appellant has failed to establish the plea of customary right or that the sale of the suit property by defendant No.1 to defendant No.3 was not for legal necessity. On the contrary, the cross-examination of defendant No.1 (Smt. Hasni) would show that she has withstood lengthy cross-examination and stood by her stand that the sale in question was for consideration received



from defendant No.3, who happens to be her daughter. It is also noteworthy that respondent No.1 has not been confronted with any such custom pleaded by the plaintiff-appellant.

10. During the course of hearing, learned counsel for the appellant has failed to point out any patent illegality or perversity in either of the impugned judgments.

11. No other issue has been raised.

12. In view of the aforesaid, it is clear that the case does not involve any substantial question of law, which is *sine qua non* for exercising appellate jurisdiction under Section 100 of the Code of Civil Procedure, 1908. The concurrent finding of facts recorded by the Courts below, have been found to be legally justified and based on proper reasoning. Hence, no case for interference has been made out.

13. Resultantly, the present regular second appeal stands dismissed.

14. Pending applications, if any, also stand disposed of.

September 30, 2024

harish

(VIKAS SURI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No