

2024:PHHC:163967



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

RSA-3838-2019 (O&M)

Reserved on : 27.11.2024

Date of Decision : 10.12.2024

Ram Kumar (deceased) through LRs & Ors.

....Appellants

VERSUS

Banto Devi & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate for the appellants.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellants against the concurrent findings returned by both the Courts vide judgements and decrees dated 17.04.2015 and 08.03.2019 while dismissing the suit for declaration with consequential relief of joint possession and injunction.

2. Brief facts relevant to be noticed in the present case are that the plaintiff-appellants filed the suit averring that the plaintiff-appellants and defendant-respondent Nos.4 to 5 are real brothers being sons of Jai Ram and Smt. Pato Devi, the first legally wedded wife of Jai Ram. Out of this wedlock one daughter namely Smt. Bala Devi was also born out who is married. Smt. Pato Devi died in 1997 and till her death she remained with Jai Ram as his legally wedded wife. Jai Ram died in 2000. It was further averred that Jai Ram was a man of bad habits and a habitual drunkard. In 1959 the defendant-respondent No.1 (Banto Devi) pressurized Jai Ram to

marry her secretly at the back of the Smt. Pato Devi. The second marriage of Jai Ram is null and void and the children born out of the alleged second marriage are all illegitimate children. The defendant-respondent No.2 was alleged to being the illegitimate son of Jai Ram and defendant-respondent No.1. Jai Lal owned the suit land which was ancestral in his hands having inherited it from his father Nagina and the plaintiff-appellants and defendant-respondent Nos.4 and 5 are entitled to inherit the same in equal shares after the death of Jai Ram being coparceners having a right by birth. It was submitted that defendant-respondent Nos.1 and 2 had no right, title or interest in the suit land. However, Jai Ram had suffered a consent decree dated 12.08.1958 qua 1/2 share in the suit land in favour of defendant-respondent No.1 who later suffered a decree dated 08.08.1990 qua a portion thereof in favour of defendant-respondent No.2. Mutations were also sanctioned on the basis of the two decrees. A gift deed dated 17.02.1998 and a release deed/dastbardinama dated 23.11.2004 was also forged by the defendant-respondent Nos.1 to 3. It was alleged that the defendant-respondent Nos.1 to 3 had forcibly taken possession of part of the suit land in October 2010 and it was then that the plaintiff-appellants came to know about all the documents and the fraud and forgery committed by defendant-respondent Nos.1 to 3. Hence, the suit. In their written statement the defendant-respondent Nos.1 to 3 raised several preliminary objections regarding locus standi, maintainability, limitation, concealment, estoppel, no cause of action etc. On merits it was submitted that the defendant-respondent No.1 is the legally wedded wife of Jai Ram and defendant-respondent No.2 is son of Jai Ram and that there were also five daughters out of the wedlock

of Banto Devi and Jai Ram. It was the stand taken that Jai Ram had suffered a decree in favour of Smt. Pato Devi and defendant-respondent No.1 on 12.08.1958 in equal share on the basis of a family settlement. While the plaintiff-appellants and defendant-respondent Nos.4 and 5 inherited the land owned by their mother Smt. Pato Devi, the defendant-respondent No.2 got the land of his mother (defendant-respondent No.1) by way of decree and release deed. It was stated that defendant-respondent No.1 was married with Jai Ram in 1949 and that she was the his legally wedded wife and all the children born out of the wedlock of defendant-respondent No.1 and Jai Ram are the legal heirs of Jai Ram and that the suit land was not ancestral in the hands of Jai Ram.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether plaintiffs are entitled to a decree for declaration, as prayed for ? OPP
2. Whether the plaintiffs are entitled to a decree for joint possession, as prayed for ? OPP
3. Whether the plaintiffs are entitled to a decree for permanent injunction, as prayed for ? OPP
4. Whether the suit is not maintainable and the plaintiffs have no locus standi and cause of action to file the present suit ? OPD
5. Whether the plaintiffs have concealed the true and material facts from this Court ? OPD
6. Relief.

4. Vide judgment and decree dated 17.04.2015 the Trial Court dismissed the suit of the plaintiff-appellants. Their appeal was also dismissed by the First Appellate Court vide judgement and decree dated 08.03.2019. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellants would contend that both the Courts have erred in dismissing the suit. It is urged that the suit land was ancestral and Jai Ram did not have any right to transfer the same. It is also argued that defendant-respondent No.1 was not the legally wedded wife of Jai Ram and that defendant-respondent No.2 was their illegitimate son and had no right over the suit land.

6. I have heard the learned counsel for the plaintiff-appellants.

7. In the present case the plaintiff-appellants had come to Court alleging that defendant-respondent No.1 and Jai Ram got married in 1959 while the stand of the defendant-respondent Nos.1 and 2 was that the marriage took place in 1949. There is no evidence worth the name to suggest that the defendant-respondent No.1 and Jai Ram got married in 1959. Further, the plaintiff-appellants failed to establish that the suit land was ancestral in the hands of Jai Ram. Both the Courts have found that the plaintiff-appellants had not been able to prove that the suit land was ancestral property. The plaintiff-appellants could not establish from any documentary evidence that the suit land was ancestral property. No documentary evidence has been pointed out to show that the suit land was coming through four male lineal descendants. Since the plaintiff-appellants failed to prove that the suit land was ancestral and co-parcenary property and it devolved upon Jai Ram by way of survivorship by way of fourth

generation in continuity, the judgements and decrees passed by both the Courts cannot be faulted. Learned counsel for the plaintiff-appellants is unable to point to any cogent and reliable evidence on the record to show that the suit land was ancestral and co-parcenery property or that the impugned transfers are vitiated by fraud. In the absence of such reliable evidence, the findings recorded by both the Courts are unimpeachable. 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.

10.12.2024

Ankur

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO