



114

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

RSA No.5303 of 2015 (O&M)

Date of Decision : 04.12.2024

Bablu (minor) and others

.....Appellants

Versus

Jaibir and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Abhay Chauhan, Advocate for
Mr. Pritam Singh Saini, Advocate
for the appellants.

Mr. Amit Jain, Senior Advocate with
Mr. Anupam Mathur, Advocate
for respondents No.2 and 3.

PANKAJ JAIN, J. (ORAL)

Plaintiffs are in second appeal. For convenience and to avoid confusion, the parties hereinafter are referred to by their original position in the suit i.e. the appellants as the plaintiffs and the respondents as the defendants.

2. Plaintiffs filed suit for declaration with the consequential relief of permanent injunction. Plaintiffs claimed that defendant No.1 sold property in favour of defendant No.2 in collusion with defendant No.3 without there being any legal necessity. Plaintiffs No.1 to 3 being co-parceners and plaintiff No.4 being wife of defendant No.1 have a right in the ancestral, co-parcenary property in the hands of defendant No.1. The sale in



favour of defendant No.2 is without legal necessity, apart from being an act of fraud and the same deserves to be set aside.

3. Defendants No.1 and 3 were proceeded *ex parte*.

4. Defendant No.2 contested the suit. It was denied that the property purchased by defendant No.2 from defendant No.1 was either ancestral or co-parcenary property. It was claimed that defendant No.1 was owner in possession of the suit property. He was in need of money. He filed an application before District & Sessions Judge, Narnaul seeking permission to sell the suit property. The same was granted vide order dated 23.12.2004. Sale deed dated 04.01.2005 was executed by defendant No.1 in favour of defendant No.2 owing to necessity.

5. Suit filed by the plaintiffs was put to trial by the Court of First Instance, framing following issues:

- “1. Whether the suit property in the hands of defendant no.1 was ancestral and co-parcenary? OPP
2. Whether the sale deed bearing vasika No.6402 is liable to be set aside being executed without legal necessity and consideration? OPP
3. Whether the plaintiff are entitled for the injunction as prayed for? OPP
4. Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD
5. Whether the present suit is not maintainable? OPD
6. Relief.”

6. Trial Court decided issues No.1 to 3 jointly. Trial Court after analysing the evidence came to the conclusion that the suit land came in the hands of defendant No.1 Jaibir from his father Lillu Ram through Civil



Court Decree. There is no challenge to the Civil Court decree suffered by Lillu Ram in favour of Jaibir. Thus, defendant No.1 being absolute owner of the suit property cannot be held to be incompetent to transfer the same in favour of defendant No.2 for a valuable consideration. It has also come on record that sale deed was executed for an amount of Rs.13,75,000/- at a time when defendant No.1 was in custody. He was produced on the strength of the orders passed by the Court. An amount of Rs.4,00,000/- out of the sale proceeds is still lying in the Fixed Deposit. Thus, the Trial Court dismissed the suit filed by the plaintiffs.

7. In appeal preferred by the plaintiffs, Lower Appellate Court has affirmed the judgment and decree passed by the Trial Court holding that there is nothing on record to prove that the property in hands of Lillu Ram was ancestral. Lillu Ram is still alive and has not challenged Civil Court Decree suffered by him in favour of defendant No.1. Thus, by all means, suit land in the hands of defendant No.1 being his self-acquired property, there can't be any question on his competence to alienate the same. Lower Appellate Court thus dismissed the appeal filed by the plaintiffs.

8. Counsel for the appellants/plaintiffs has emphatically argued that the Courts below erred in ignoring the fact that the land in the hands of Lillu Ram was ancestral. The said land originally was in the name of Roop Ram. Thereafter, the property further devolved upon Lillu Ram. Lillu Ram had no authority to suffer decree in favour of defendant No.1. Any such decree suffered by Lillu Ram would have no bearing on the rights of the



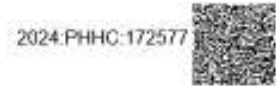
plaintiffs. Thus, the findings recorded by the Courts below w.r.t. land being ancestral need to be reversed and the instant second appeal deserves to be allowed.

9. Per contra, Senior Counsel representing the respondents/defendants submits that it has come on record that till date Lillu Ram is alive. There is nothing on record to suggest that Lillu Ram ever challenged the decree suffered by him in favour of defendant No.1. Defendant No.1 having come in possession of the suit property on the strength of Civil Court Decree, cannot be said to be in possession of ancestral property. Thus, no fault can be found with the findings recorded by the Courts below.

10. I have heard counsel for the parties and with their able assistance have carefully gone through records of the case.

11. The fate of the *lis* hinges upon the nature of the property in the hands of defendant No.1.

12. Counsel for the plaintiffs is not in position to dispute that keeping in view that defendant No.1 came in possession of the suit property on the basis of a decree passed by Civil Court, he acquired the suit land not through survivorship but through succession. Best case in favour of the plaintiffs is that the property in hands of Lillu Ram being an ancestral property, he could not have bequeathed the same in favour of defendant No.1 by way of Civil Court Decree. However, in order to make out said case, plaintiff was required to challenge the Civil Court Decree suffered by Lillu Ram in favour of defendant No.1. Till the said decree is in vogue, the



plaintiffs cannot succeed. In order to challenge the same, plaintiffs need to file appropriate application under Order XXIII of the Code of Civil Procedure, before the same Court. Leave aside filing application before the Court that passed decree in favour of defendant No.1, no challenge has been laid to the decree suffered by Lillu Ram in favour of defendant No.1 even in the instant suit. It has come on record that Lillu Ram is still alive. Lillu Ram never challenged the decree suffered by him in favour of defendant No.1. Lillu Ram was never impleaded as party to the present *lis*. Thus, by merely claiming that the land in the hands of Lillu Ram was ancestral, plaintiffs cannot succeed till an appropriate challenge is laid to the decree suffered by Lillu Ram.

13. In view of above, this Court does not find any reason to interfere in the concurrent finding recorded by the Courts below. Consequently, finding no merit in the instant appeal, the same is ordered to be dismissed.

14. Pending application(s), if any, shall also stand disposed off.

December 04, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No