

2024:PHHC:084781



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

RSA-1111-2018 (O&M)

Date of decision:-09.07.2024

Smt.Shanti

....Appellant..

VS.

Shiv Dutt and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sanjeev Kodan, Advocate,
for the appellant.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 31.01.2014 and 24.10.2017 passed by the Courts below, whereby, the suit for declaration as well as permanent injunction filed on behalf of respondent No.1 & 2/plaintiffs (herein referred to as respondents No.1 and 2) came to be decreed.

2. Briefly stating, based on a registered sale deed bearing Vasika No.3064 dated 21.01.1971, respondents No.1 and 2 sought declaration qua 1/8th share out of 55 kanals 12 marlas of land situated in the revenue estate of village Gubhana, Tehsil Bahadurgarh, District Jhajjar (as detailed in the plaint) having been purchased from appellant-defendant No.1 (herein after referred to as appellant). It was further pleaded that the appellant being in collusion with the revenue officials got entered mutation No.3779 and 3780

sanctioned in her favour on 23.06.2005 in contradiction with the sale deed

dated 21.01.1971 and based thereupon alienated 15 kanals 18 marlas of land in favour of respondent No.3 and 4/defendants No.2 & 3 (herein after referred to as respondents No.3 and 4). The prayer in the plaint was that respondents No.1 & 2 became co-sharer to the extent of 15 kanals 18 marlas of land out of the total land measuring 55 kanals 12 marlas based on registered sale deed dated 21.01.1971 and also prayed for grant of injunction restraining the appellant as well as respondents No.3 & 4 from alienating the suit land.

3. Upon notice, two separate sets of written statements were filed on behalf of appellant and respondents No.3 & 4. In the written statement filed on behalf of appellant, it was pleaded that sale deed dated 21.01.1971 executed in favour of respondents No.1 and 2 by appellant-Shanti was illegal, null and void, she being minor on the said date. Simultaneously, respondents No.3 and 4 claimed their possession being co-sharers on the basis of registered sale deed dated 19.01.2007, having purchased 15 kanals 18 marlas of land from the appellant. Based on the pleading of the parties, the following issues were framed by the trial Court on 02.11.2007:-

- “1. *Whether the plaintiffs are co-sharers in the suit land i.e. land measuring 15 kanals 18 marlas situated within the revenue estate of village Gubhana fully detailed and described in para no.2 of the plaint on the basis of sale deed no.3064 dated 21.01.1971 on the grounds alleged? OPP*
2. *Whether the defendants are liable to be restrained from alienating or transferring the suit land in any manner on the grounds alleged?OPP*
3. *Whether the suit of the plaintiffs is not maintainable in the present form?OP*
4. *Whether the plaintiffs have no locus standi to file the*

present suit? OPD

5. *Whether the suit of the plaintiffs is barred by limitation ? OPD*
6. *Whether the plaintiffs have no cause of action to file the present suit?OPD*
7. *Whether the suit of the plaintiffs is bad for non-joinder and mis-joinder of necessary parties?OPD*
8. *Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD*
9. *Whether plaintiffs have not come to the court with clean hands and suppressed the material facts OPD.*
10. *Relief.”*

4. The trial Court vide judgment and decree dated 31.01.2014 decreed the suit in favour of respondents No.1 and 2, declaring them owner in possession of 15 kanals 12 marlas of land in pursuance of sale deed dated 21.01.1971 while disbelieving the case set-up by appellant that she happened to be minor on the date of execution of the said sale deed.

4. Aggrieved thereof, appellant filed first appeal, which came to be dismissed by the Court of Additional District Judge, Jhajjar vide its judgment and decree dated 24.10.2017.

5. By way of present appeal, aforementioned judgments and decrees passed by the Courts below have been assailed by the appellant.

6. Learned counsel for the appellant submits that both the courts below failed to appreciate the evidence available on record in the shape of document (Ex.D-1) from which, it could be clearly discerned that the date of birth of appellant was 27.12.1954 and thus, she happened to be minor on the date of execution of sale deed dated 21.01.1971 and in such circumstances, the said sale deed being illegal null and void, the suit filed at the instance of

respondents No.1 and 2 seeking declaration qua ownership based thereupon was liable to be dismissed. He also submits that the suit filed at the instance of respondents No.1 and 2 was barred by limitation as declaration qua ownership was claimed by them in the year 2007 based on sale deed dated 21.01.1971 and thus, the appeal is accordingly liable to be allowed. No other argument has been addressed.

7. I have heard learned counsel for the appellant and gone through the paper book, I am unable to find substance in the submissions made on behalf of the appellant.

8. The first and foremost relevant issue to be adjudicated upon in the present appeal is “as to whether the appellant happened to be minor as on the date of execution of sale deed dated 21.01.1971 by her in favour of respondents No.1 and 2”. In this regard, sufficient evidence has been led in the shape of document (Ex.P-1) i.e. birth certificate pertaining to appellant-Shanti d/o of Bhima s/o of Sunda, which was proved on record by PW-2-Jogender, an official from the office of CMO, Jhajjar, as per which, the date of birth of appellant was recorded as 03.01.1952 and upon perusal of record, the said witness in his statement also deposed that the aforementioned entry was got recorded by the village Chowkidar. On the contrary, the appellant merely produced a birth certificate showing her date of birth as 27.12.1954, however, no records from the concerned office of CMO, Jhajjar or from the office of Registrar, Birth and Death, Jhajjar was ever produced on record to prove and substantiate the same. Upon perusal of afore-discussed evidence produced by the parties, besides, finding material contradiction in the deposition of appellant herself, who appeared as DW-2, the Courts below went on to record concurrent findings of fact that the date of birth of

appellant was 03.01.1952 and thus, she was major and fully competent to alienate and execute the sale deed dated 21.01.1971 in favour of respondents No.1 and 2. There being no misreading of any material evidence available on record, in the humble opinion of this Court, the said finding does not call for any interference in the present appeal.

9. Furthermore, no merits can be found in the submissions made on behalf of appellant as regards the suit for declaration filed at the instance of plaintiffs being barred by limitation. Once the declaration qua ownership of the suit property was claimed by respondents No.1 and 2 on the basis of title flowing from registered sale deed dated 21.01.1971, the suit filed at their instance could not be held to be barred by limitation.

10. In view of the discussion made herein-above, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts below, there being no overlooking of the material available on record; re-appreciation of pleadings and the evidence being impermissible, the present appeal being devoid of merits is thus dismissed.

11. Pending application, if any, also stands disposed of.

09.07.2024

sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No