



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2447-2018 (O&M)
Reserved on : 29.07.2024
Date of Decision : 21.08.2024

Smt. Bimla DeviAppellant
VERSUS
Hari Singh & OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jainainder Saini, Advocate for the appellant.

ALKA SARIN, J.

CM-6479-C-2018

1. For the reasons mentioned therein, the application for condonation of 32 days delay in filing the appeal is allowed. The delay of 32 days delay in filing the present regular second appeal is condoned.

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2. The present appeal has been preferred by the plaintiff-appellant challenging the concurrent findings returned by the Trial Court and the First Appellate Court vide judgments and decrees dated 29.09.2014 and 07.10.2017 respectively.

3. The brief facts relevant to the present case are that the plaintiff-appellant and the defendant-respondents belong to one family. Defendant-respondent No.1 is the father of the plaintiff-appellant, defendant-respondent Nos.2 and 3 are her step-brothers while defendant-respondent No.4 is her

step-mother. The plaintiff-appellant filed a suit for declaration with consequential relief of permanent injunction alleging that the suit land is coparcenary property. As per the plaintiff-appellant she is the daughter of defendant-respondent No.1 and Smt. Shanti Devi and that Smt. Shanti Devi had died on 18.03.2004 leaving behind the plaintiff-appellant and the defendant-respondent No.1 as her legal heirs and that defendant-respondent Nos.2 to 4 have no relation with the plaintiff-appellant or defendant-respondent No.1. It was claimed that the suit land was owned by her grandfather, Gopal, and after Gopal's death it was inherited by his wife, sons and daughters, including her father, the defendant-respondent No.1. Thereafter, the wife and daughters of Gopal released their shares in favour of the sons including defendant-respondent No.1. It was the stand taken that that the suit land inherited by defendant-respondent No.1 is ancestral property and the plaintiff-appellant had a pre-existing right in the same since her birth being coparcenary in the suit land. It was further averred that by an illegal decree dated 26.02.2011 the defendant-respondent No.1 had transferred the suit land in favour of defendant-respondent Nos.2 to 4 which he had no right to do since the suit land was ancestral and coparcenary property. Hence, the suit. In the written statement it was averred that no son was born out of the wedlock of Smt. Shanti Devi and defendant-respondent No.1 and that defendant-respondent No.1 had performed marriage with defendant-respondent No.4 and out of their wedlock five children were born including defendant-respondent Nos.2 and 3. It was stated that defendant-respondent Nos.2 and 3 were the real sons of defendant-respondent No.1 while defendant-respondent No.4 was his wife. It was denied that the suit

land was ancestral or co-parcenary property. It was stated that the defendant-respondent No.1 of his own free will and sound mind had suffered the decree dated 26.02.2011 in favour of the defendant-respondents and that the plaintiff-appellant had no right to challenge it on any ground. No replication was filed by the plaintiff-appellant.

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

1. Whether the plaintiff is entitled to the relief of declaration as prayed for ? OPP
2. Whether the decree dated 26.02.2011 passed in civil suit No. 172-C of 2010 passed by the then learned Civil Judge (Junior Division) Hisar registered vide serial No. 14199 dated 25.03.2011 is illegal, null and void and same is liable to be set aside ? OPP
3. Whether the plaintiff is entitled to the relief of injunction as prayed for ? OPP
4. Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD
5. Whether the plaintiff is estopped by her own act and conduct to file the present suit ? OPD
6. Whether the suit of plaintiff is not maintainable ? OPD
7. Whether the plaintiff has not come to this court with clean hands and has concealed the true and material facts from the court ? OPD
8. Relief.

5. The Trial Court vide judgment and decree dated 29.09.2014 dismissed the suit. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed vide judgment and decree dated 07.10.2017. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing the suit of the plaintiff-appellant. It is submitted that the suit land was ancestral property in which the plaintiff-appellant had a share by birth and that defendant-respondent No.1 could not alienate the same without any legal necessity.

7. I have heard the learned counsel for the plaintiff-appellant.

8. In the present case both the Courts have found that the plaintiff-appellant had not been able to prove that the suit land was ancestral property. Apart from the oral testimonies, the plaintiff-appellant 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. The Trial Court held that *“The another contention advanced by the learned counsel for the plaintiff that as the suit property is ancestral one and the plaintiff has pre-existing rights in the same, therefore, the defendant no.1 has no right to transfer the same in favour of other person except the plaintiff, is not tenable because no document has been placed on file regarding the fact that the suit property is an ancestral one and the plaintiff failed to adduce any evidence regarding the fact that the suit property is ancestral one”*. In the appeal the First Appellate Court held that *“it is clearly made out that to prove nature of the suit property being ancestral, it was incumbent upon the plaintiff-appellant to show that the property was coming through four male lineal descendants and the same had never been partitioned among them. Plaintiff-appellant has failed to prove this fact. Simple case of appellant-plaintiff is that property is owned by Gopal her grandfather. No pleadings were made*

or evidence has been led as to show that Gopal had inherited it as ancestral/coparcenary property or through male lineal decedents. Similarly, Section 8 applies to a property of male Hindu died intestate after the commencement of Hindu Succession Act and Section 6 permits co-parcenary property to devolve by survivorship and hence, where section 6 applies section 8 would not have application. If the deceased is sole co-parcener there being no other surviving member of co-parcener Section 8 applies and sons will get succession as if it was their separate property. It is therefore clear that in order to prove continuity of co-parcenary it was incumbent upon plaintiff to prove that at the time of opening of succession on the death of Gopal, father of defendant No.1 plaintiff was a co-parcener. If the plaintiff was not a co-parcener on the day when Gopal had died, the property shall devolve upon defendant No.1 as his self acquired property and shall not be co-parcener/ancestral property/joint Hindu Family Property qua plaintiff. Admittedly Gopal had died in 1989 and at that time plaintiff was not a coparcener". It was further held by the First Appellate Court that "In present case even appellant-plaintiff has admitted that after death of Gopal in 1989 property was inherited by all the Class -1 legal heirs of Gopal. It was also not disputed by appellant-plaintiff that mother and sisters of defendant No.1 had bequeathed their share in favour of defendant No.1 and his brothers from above noted two facts admitted by appellant-plaintiff it is clearly made out that suit property in the hands of defendant No.1 was succeeded under Section 8 of Hindu Succession Act and therefore was self acquired property & not ancestral and coparcenary property". Since the plaintiff-appellant has failed to prove that the suit land was

ancestral and co-parcenary property and it devolved upon defendant No.1 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-appellant 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. In the absence of such reliable evidence, the findings recorded by both the Courts are unimpeachable. No other point was argued.

9. 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.

21.08.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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