

101.

2024:PHHC:014553

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA-5883-2017 (O&M)

Date of decision: 09.01.2024

Karnail Singh

... Appellant

Versus

Karamjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Gautam Diwan, Advocate and
Mr. Deepak K. Bartia, Advocate, for the appellant.

GURBIR SINGH, J.

1. This regular second appeal has been filed by the appellant-plaintiff against the judgment and decree dated 01.03.2017 passed by learned Additional District Judge, Yamuna Nagar at Jagadhri, whereby his appeal against the judgment and decree dated 06.09.2013 passed by learned Civil Judge (Junior Division), Jagadhri, has been dismissed.
2. Briefly stated, the appellant-plaintiff (hereinafter called, “plaintiff”) filed a suit for declaration to the effect that the alleged gift deed dated 10.01.2006 in respect of total 11 kanals and 4 marlas of land, as described in the plaint, is illegal and ineffective as the plaintiff has pre-existing right in the suit land being joint Hindu Family land, and also sought for permanent injunction restraining the respondents-defendants (hereinafter called, “defendants”) from alienating, transferring the suit land in any manner.

2.1 The case as set up by the plaintiff is that he is the son of Parkash, defendant No.4, son of Santu, through whom his father had inherited the suit land by way of survivorship. It was pleaded that the suit land being ancestral Joint Hindu Family land, the plaintiff has pre-existing right in the same. It was submitted that in the year 2005, an oral partition took place, vide which, the suit land was given by his father to the plaintiff and since then, he is in joint possession as co-owner in the suit land. It was contended that the gift deed dated 10.01.2006 alleged to have been executed by his father in favour of the defendants is illegal and the outcome of fraud and misrepresentation.

2.2 Upon notice, defendants No.1 to 3 appeared and filed written statement and stated that gift deed, in question, was executed by the father of plaintiff in their favour and regarding said gift deed, defendant No.4 had also filed a civil suit which was later on withdrawn by him. The suit land is not joint but is the exclusive land of defendants.

2.3 After appreciating the evidence on record, the learned trial Court dismissed the suit vide judgment and decree dated 06.09.2013 and an appeal in respect thereof, was also dismissed vide judgment and decree dated 01.03.2017 by the learned appellate Court.

2.4 Aggrieved against the aforesaid judgments and decrees of both the courts below, the plaintiff has approached this Court by way of present appeal.

3. Learned counsel for the appellant-plaintiff has argued that the father of the appellant i.e. respondent No.4-Parkash had no right to execute gift deed of the suit property, without there being any partition to the ancestral joint Hindu family property, in favour of the strangers leaving his natural heirs. It is submitted that though the appellant was not a party to the suit alleged to have been filed by respondent No.4 against respondents No.1 to 3 challenging the gift deed, but since he has pre-existing right in the suit property, he has every right to challenge the gift deed, in question.

4. I have heard the submissions of learned counsel for the appellant and have gone through the file.

5. A perusal of order of court below would show that earlier one Nanki was married with Fattu and from said wedlock, Ramji Lal, Chamela and Nanu were born. Defendants No.1 to 3 are their sons respectively. After the death of Fattu, Nanki remarried with Santu and out of said wedlock, Parkash, respondent-defendant No.4, was born. So, the respective fathers of defendants No.1 to 3 and defendant No.4 are the sons of Nanki and are brothers.

6. The case of the petitioner-plaintiff is that the suit property is joint Hindu family property and ancestral one and he has pre-existing right upon the suit property since it was devolved upon his father-respondent No.4 by way of survivorship. He along with his father claims to be coparcener. The property being ancestral, respondent No.4 could not execute gift deed, in question, in favour of respondents No.1 to 3.

But all these claims are only his arguments, these were not specifically pleaded in the suit. He could not substantiate the above said pleadings. An admission of a party may not be enough to hold the property to be ancestral or coparcenary as to prove the nature of property. No pedigree table is proved. It is not proved that property is devolved upon his father from the last three generations by way of natural inheritance. Defendant No.4, although admitted the case of plaintiff, did not step into the witness box to deny execution of gift deed. Since the respective fathers of respondents No.1 to 3, and respondent No.4 were brothers, so they cannot be considered as strangers.

7. There is neither misrepresentation nor mis-appreciation of evidence. No substantial question of law arises for consideration in this regular second appeal.

8. Since there are concurrent findings of facts recorded by both the courts below, this Court does not find any reason to interfere in the well reasoned judgments and decrees of the courts below. Accordingly, present appeal is dismissed.

9. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

January 09, 2024
sanjeev

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