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

RSA-196-2019 (O&M)
Reserved on : 16.05.2024
Date of Decision : 20.05.2024

Mohinder Singh

....Appellant

VERSUS

Kishan Chand deceased through LRs & Anr.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Brijesh Kumar, Advocate
for Mr. Arun Takhi, Advocate for the appellant.

ALKA SARIN, J.

CM-447-C-2019

For the reasons mentioned in the application, the delay of 33 days in refiling the appeal is condoned. CM stands disposed off.

RSA-196-2019

1. The present appeal has been preferred by the plaintiff-appellant challenging the concurrent findings returned by both the Courts dismissing his suit for declaration.

2. The brief facts relevant to the present case are that the plaintiff-appellant filed a suit for declaration that he is owner of equal 1/3rd share out of joint hindu family property out of land measuring 38 Kanals 14 Marlas bearing Khewat No.124 Khatauni No.288 Khasra Nos.90//9/1 (6-0), 9/2 (2-0), 12 (8-0), 13 (6-0), 8/1 (1-0), 8/2 (7-0), 7/2 (4-0); Khatauni No.331 Khasra No.90//14/1 (4-0 situated in village Bela Sariana, Tehsil Mukerian,

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Distt. Hoshiarpur and for declaration that the sale deed dated 04.06.2001 executed by defendant No.1 (Kishan Chand) in favour of defendant No.2 (Shiv Kumar) is null and void and without consideration and consequent mutation no.3072 is also null and void and in the alternative a suit for joint possession of the property in dispute. According to the plaintiff-appellant the property in dispute was purchased by defendant No.1 out of joint hindu family income with the monetary help of the plaintiff-appellant as the plaintiff-appellant was the only earning member of the family who was employed in a Government job before 1986 and whatever was spent for depositing the instalments with the Government was done with the earning of the plaintiff-appellant. It was averred that improvements on the property in dispute like installation of the well, tubewell, electric connection and levelling of the land had been done by the plaintiff-appellant by incurring huge expenses. As per the plaintiff-appellant the defendants in connivance with each other had illegally executed a sale deed dated 04.06.2001 without consideration. Defendant No.1 transferred the property in dispute to defendant No.2 whereas defendant no. 2 is absolutely unemployed having no money to pay the huge amount as stated in the sale deed dated 04.06.2001. It was asserted by the plaintiff-appellant that defendant No.1 is in possession of the property in dispute and he had been squandering away the earnings arising from it. There was no legal necessity for defendant No.1 to sell the property in dispute to defendant No.2 without any consideration. Hence, the present suit. The defendants filed written statement raising preliminary

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objections of locus standi, maintainability, estoppel, concealment of facts etc. It was submitted that the property in dispute was the self-acquired property of defendant No.1 and that the plaintiff-appellant did not have any right or concern with the same. It was further stated that the plaintiff-appellant never contributed any amount for the welfare of the property in dispute and that he was residing separately since the time of his marriage and that defendant No.1 had every right to alienate the property in dispute it being his self-acquired property. It was stated further that the plaintiff-appellant had earlier filed a similar civil suit qua the property in dispute which suit was dismissed and the appeal of the plaintiff-appellant was also dismissed and therefore the present suit was barred by res-judicata. The plaintiff-appellant filed replication denying the contents of the written statement and reiterating those of the plaint.

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

1. Whether the suit property was ancestral in nature in the hands of defendant Kishan Chand ? OPP
2. Whether the plaintiff is entitled to the relief of declaration as claimed for ? OPP
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the plaintiff has concealed material facts from the court ? OPD

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5. Whether the plaintiff has no locus standi to file the present suit ? OPD
6. Whether suit is barred under Section 11 of CPC ? OPD
7. Whether the suit is bad for non-joinder of necessary parties ? OPD
8. Whether the plaintiff is estopped by his own act and conduct from filing the present suit ? OPD
9. Relief.

4. The Trial Court vide judgment and decree dated 08.07.2015 dismissed the suit of the plaintiff-appellant. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 25.04.2018. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing his suit. It is argued that the property in dispute was joint Hindu family property and that the plaintiff-appellant had contributed towards its purchase which was fully proved. It was argued that the plaintiff-appellant had 1/3rd share in the property in dispute and the sale deed executed by defendant No.1 in favour of defendant No.2 with respect to the property in dispute was null and void being without legal necessity and without consideration.

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

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7. In the present case the plaintiff-appellant failed to prove that there was a joint Hindu Family comprising of him and the defendants. He failed to prove that the property in dispute was purchased from any joint family funds. He also failed to prove that he had contributed financially for the purchase of the property in dispute. The Trial Court held that *“Further not even an iota of evidence has been led by the plaintiff to prove the fact that plaintiff and defendants had nucleus of joint Hindu Family property. Therefore, it is apparently clear that, plaintiff has miserably failed to discharge the onus of proving the fact that plaintiff and defendants are members of joint Hindu Family. No doubt it has been asserted by the plaintiff that, he had been paying the installments of land, after it was allotted in the name of defendant no. 1, but, no such receipt has been placed on record by the plaintiff showing payment of installment by him. Therefore, it is apparently clear that, not even an iota of evidence has been led by the plaintiff in order to prove the fact that, property in dispute was Joint Hindu Family Property in the hands of defendant no. 1”*. The First Appellate Court also found that the plaintiff-appellant failed to establish by leading evidence that he ever contributed in the joint family funds for creating nucleus of such funds at the time of acquisition of the property in dispute which was purchased in 1970 when the plaintiff-appellant was only 11 years of age. Even before this Court the learned counsel for the plaintiff-appellant has been unable to point out any cogent evidence on the record which would prove that the property in dispute was joint hindu family property and that he

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had contributed when it was purchased in 1970. No other point was argued.

8. In view of the above, the impugned judgments and decrees suffer from no illegality. The suit of the plaintiff-appellant has rightly been dismissed. The present appeal is without merits and the same is dismissed. Pending applications, if any, also stand disposed off.

20.05.2024
Aman Jain

(ALKA SARIN)
JUDGE

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