



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3611-2023 (O&M)
Date of Decision:-21.08.2024

Dharambir

... Appellant

Versus

Smt. Kapoori and Others

... Respondents

-. -

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. Sunil Kumar Goswami, Advocate
for the appellant.

RITU TAGORE, J. (Oral)

1. Appellant/plaintiff, filed this Regular Second Appeal against judgment and decree of the learned 1st Appellate Court, dated 06.07.2023, passed in Civil Appeal No. 79 of 2018, affirming and upholding the judgment and decree of the learned trial Court dated 18.09.2018, passed in Civil Suit No.RBT/148-18 titled as Dharambir Vs. Smt. Kapoori and others, dismissing the suit of the plaintiff for declaration and permanent injunction, instituted against the respondents/defendants No.1 to 3.

2. For easy reference, the parties to the *lis*, hereinafter shall be referred to by their original status in the suit.

3. The relevant facts for adjudication of this appeal are that, plaintiff, instituted a suit for declaration and permanent injunction with respect to the suit land total measuring 11 kanals 15 marlas, being 235/6371th



share out of the total land measuring 318 kanals 11 marlas, situated in village Kheri Bulawali Tehsil and District Jind. The plaintiff claimed that he is grandson of defendant No.3-Ram Singh son of Preet Singh son of Fateh Singh. The suit land was ancestral property in the hands of defendant No.3, which he succeeded from his three immediate paternal ancestors.

4. The plaintiff further pleaded that he and defendant No.3 are Hindu by religion and are governed by law of succession and alienation by Mitakshra School of Hindu Law. The plaintiff and defendant No.3, his grand-father, formed Joint Hindu Coparcenary body with other coparceners. The suit land is a Joint Hindu Coparcenary property and he being grandson has coparcenary right in the suit land. He acquired right in the suit land by birth. The suit land is not self-acquired property of defendant No.3 and being '*Karta*' of the family, has no right to alienate the suit land except for legal necessity.

5. The plaintiff further averred that sale deed No.290 dated 03.06.2016 regarding the suit land made by defendant No.3 in favour of defendants No.1 and 2 is illegal, null and void, not binding on his rights in the suit land. It is asserted that defendant No.3 is an alcoholic, and defendants No.1 and 2, taking advantage of his bad habits, had the sale deed executed in their favour. The sale deed is an outcome of fraud, as no consideration was passed under the sale deed. Defendant No.3, had no right to alienate the suit land, nor there was any legal necessity for him to sell the same. Furthermore, defendant No.3 was also not in possession of the suit land, which is owned and possessed by him (plaintiff). On these pleas, plaintiff, assailed the sale deed and seeks a decree of declaration and



injunction restraining the defendants from dispossessing him from the suit land and further restricting the defendants from alienating or encumbering the suit land or part thereof in any manner.

6. The defendants No.1 and 2 upon put to notice, appeared and filed their written statement and contested the suit, while challenging the maintainability of the suit on the ground of non-joinder of necessary parties i.e. his father, brother and sisters and further denying the right over the suit land by pleading that he has been disowned by his father. They asserted that sale deed was validly executed by defendant No.3 in their favor, against valuable consideration and they are owners in possession of the suit land since their purchase.

7. Defendant No.3 filed the separate written statement and confirmed the fact of the sale of the suit land in favour of defendants No.1 and 2, for a valuable consideration. The defendant No.3 also raised challenge to the *locus-standi* of plaintiff and justifiable cause of action in his favor to file the suit. The ownership and possession of the plaintiff in the suit land were denied. Furthermore, it was pleaded that plaintiff has been disowned by his father, Dilbagh Singh.

8. Since the parties were at variance, the learned trial Court framed following issues:-

1. Whether plaintiff is entitled for the relief of declaration as well as for permanent injunction as prayed for? OPP.
2. Whether the plaintiff has got no cause of action and locus-standi to file the present suit? OPD.



3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has not come in the Court with clean hands? OPD
5. Relief

9. The plaintiff in support of his pleadings, appeared as PW-1 and reiterated the version of the plaint and also examined Kashmir Lal Patwar Moharir, as PW-2, who statedly prepared the excerpt Ex. PW2/A. The plaintiff tendered the sale deed Ex.P-1, excerpt Ex. PW2/A for the year 1908-09 and Ex.P3, Jamabandi for the year 2011-12. On the other hand, defendants examined four witnesses. Ram Singh, defendant No.3 appeared as DW-1 and deposed as per his written statement. Om Prakash DW-2, an attesting witness to sale deed Ex.P-1, testified that Ram Singh DW-1, executed the sale deed of the suit land in favour of defendants No.2 and 3 and he attested the sale deed. He also deposed that consideration was paid by defendants No.2 and 3 to defendant No.3 in his presence. Smt. Kapoori (defendant No.1) appeared as DW-3 and Smt. Krishana (defendant No.2) as DW-4, both testified that they purchased the suit land from Ram Singh, defendant No.3 and paid sale consideration to him and possession of the suit land was given to them by vendor Ram Singh and they are in cultivating possession of the suit land since then.

10. The learned trial Court while dealing with issue No.1 concluded that suit land was ancestral, relying upon the admission of Ram Singh defendant No.3, acknowledging the suit land as ancestral property in his hand, having inherited from his forefathers. The learned trial Court however,



non-suited the plaintiff, by holding that he did not implead other coparceners, the necessary parties in the suit. Also, observed that, plaintiff failed to prove that sale deed was a fraudulent document, and further observed that the defendants duly proved the execution of sale deed (Annexure P-1) and passing of valid consideration to the vendor Ram Singh (DW-1), who also endorsed the execution of sale deed in favour of defendants No.1 and 2 (DW-3 and DW-4) for a valuable consideration and handing over the possession of of the suit land to the vendees. The learned trial Court also ruled that plaintiff failed to establish his cultivating possession on the suit land and dismissed the suit of the plaintiff.

11. In appeal preferred by plaintiff, learned Appellate Court, held that plaintiff failed to establish, the ancestral character of the suit land by proving the excerpt PW-2/A. The learned Appellate Court, discarded the statement of PW-2, who allegedly prepared the excerpt on the ground that he is not the author of the excerpt PW-2/A, as he admitted that he did not know Urdu Language and had the record of the suit land, which was in Urdu language, translated from other person. The person who translated the record from Urdu to Hindi language was not examined to prove the authenticity of the record/excerpt Ex,PW2/A. Based on these findings, learned Appellate Court held that Ram Singh was competent to sell the suit land being absolute owner of the suit land and further observed that valid execution of the sale deed was proved from the evidence presented by defendants. As a result, dismissed the appeal, affirming the findings of the learned trial Court, while modifying the observation regarding the ancestral nature of the suit land.



12. Learned counsel for the appellant submits that learned Appellate Court erred in discarding the admission of Ram Singh DW-1 and the evidence of PW-2, who prepared the excerpt Ex,PW2/A. The evidence duly established that, suit land was ancestral in nature and was held by Ram Singh, DW-1 as custodian, for all the coparceners. He being '*Karta*' was not competent to alienate the suit property except for legal necessity.

13. Learned counsel contends that there was no legal necessity to sell the suit land. Further, learned Courts below failed to appreciate that defendants presented no evidence to establish that sale deed was executed for any legal necessity. Therefore, sale made by defendant No.3 in favor of defendants No.1 and 2 is illegal in the eyes of law. Learned counsel further states that non-joining of other coparcener was not fatal for the plaintiff, because being a coparcener, he could challenge the sale deed, made without legal necessity. Learned counsel thus submits that observations made by the learned Courts below are factually and legally incorrect and are liable to be set-aside. A prayer is made to allow the appeal and decree the suit of the plaintiff.

14. I have heard learned counsel for the plaintiff and have gone through the paper-book and documents, i.e. photocopy of sale deed, photocopy of revenue record and photocopy of testimonial account of the witnesses, tendered on record by the learned counsel for the plaintiff for assistance of this Court and find no ground to form a different opinion to bring the findings of learned Courts below within the realm of perversity for the reasons recorded below.



(i) The learned Appellate Court has rightly observed that mere admission of defendant No.3, Ram Singh and his witnesses, acknowledging the suit property as ancestral, does not establish the suit property to be ancestral in nature. It is a settled position of law that presumption lies in favour of the land being non-ancestral, unless and until it is proved to the contrary, that land is ancestral. The burden of proof is upon the proponent to prove the fact that suit property is ancestral. Here in present case, onus was upon the plaintiff to establish that suit land was ancestral in the hands of Ram Singh, defendant No.3.

(ii) To prove that suit property was ancestral in the hands of Ram Singh-defendant No.3, the plaintiff relied upon statement of Kashmir Lal, Patwari Moharir (PW-2), who during cross-examination admitted that he does not know Urdu language and record from 1908 to 1960 was in Urdu and and he took the services of Rashid Ahlmad to get the excerpt prepared in Hindi language from Urdu language. Evidently, the plaintiff did not examine Rashid Ahlmad to establish that he correctly prepared the excerpt nor the original record was brought on record. It is settled principle of law that revenue excerpt is required to be proved formally by examining the witnesses who prepared it. In this regard, reference can be made to **Banta Singh and Others vs. Phuman Singh and Another, 1972 PLJ 275**, wherein it was held that *'the revenue excerpt must be formally proved by examining as witness the person who prepared it'*.

(iii) The learned Appellant Court also relied upon High Court Rules and Orders, Volume-I, Rule (v) and (vi) of Chapter IX, which provide the procedure for proving the excerpt, and observed that plaintiff did not follow



the same to prove the excerpt. Learned counsel for the appellant failed to point out any infirmity in the findings recorded by learned Appellate Court, observing that plaintiff failed to prove the excerpt by proving its due correctness by examining all the persons, who were engaged in preparing the same. In view of the discussion, I find no fault in the conclusion drawn by the learned 1st Appellate Court, holding plaintiff failed to establish the ancestral nature of the suit land.

(iv) Furthermore, plaintiff's suit is also defective for not impleading all other coparceners, as party, in the suit. Once the suit property is not proved to be ancestral, Ram Singh-defendant No.3 being owner of the suit land, had right to deal with the property, in the manner he liked. He was competent to alienate the suit land. While appearing as DW-1, he categorically deposed that he sold the suit land, in favour of defendants No.1 and 2 and obtained the sale consideration mentioned in the sale deed (Annexure P-1). The oral account of vendees DW-3 and DW-4, received aid from the vendor DW-1 Ram Singh, as well as attesting witness DW-2 namely Om Prakash, *Lamberdaar*. The plaintiff failed to dilute their version on any account. Furthermore, the plea of fraud and non-passing of consideration was available to Ram Singh (DW-1), the vendor and not with plaintiff. He has no right to challenge the sale deed on above grounds. The vendor, Ram Singh (DW-1) also admits of having handed over the possession of suit land to the vendees. Furthermore, the plaintiff led no evidence to show his cultivating possession on the suit land. Jamabandi Ex P-3 does not reflect his possession on the suit land. He admits that he has been disowned by his father and is having litigation with his father and sister. From the evidence,



plaintiff failed to substantiate his claim, as set out in the plaint by bringing any cogent, positive and reliable evidence. The learned Courts below thus rightly held that plaintiff is not entitled for the relief.

15. All these factors taken together, makes no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity.

16. For the reasons recorded above, I do not find any illegality or perversity, in the concurrent findings, which are based on sound application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law.

17. No other point urged.

18. Resultantly, there is no merit in the appeal and is, hereby, dismissed.

19. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

21.08.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No