

RSA No.5298 of 2015

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.5298 of 2015
Date of Decision.16.01.2018

Sher Singh

.....Appellant

Vs

Baghera Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwal Goyal, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is aggrieved of the impugned judgments and decrees rendered by both the Courts below whereby the suit claiming following relief has been dismissed:-

“Suit for declaration to the effect that transfer deed No.2562 dated 13.10.2008 executed by defendant No.5 in favour of defendant No.1 to 4 regarding the 1/6 share i.e. 0 kanal 4 marla out of property bearing khasra number 305/473 mutsil and killa No.462(1-5) total 1 kanal 5 marlas and 230/176 share i.e. 11 kanal 10 marla out of property being khata No.305/474 to 479 bearing mutsil and killa No.214/9(8-0) marla, 238//3(7-8), 238//4(8-0)12/2(4-0)19/1(1-11)238//5/1(5-7)243//2(8-0)243//9(8-0)12(8-0)19(8-0)243//3(8-0)20/1(7-) 21/3(3-0)11/1min (0-7)243//11/2min (0-18) marla) out of total 86 kanal 6 marla and khata bearing 1054/1678 killa No.175//19/3(2-17)22/1(5-12)184//2/1/1(3-12) total 12 kanal 1

marla out of 20 kanal 15 marla is wrong, illegal, null and void and is liable to be set aside. It has no effect over the rights of the plaintiff and performa defendant. Therefore, the same is liable to be set aside and plaintiff and performa defendant be declared as owner in possession as co-sharer of 1/3rd share.

(B) Suit for permanent injunction to the effect that defendant be restrained from alienate, sell or mortgage the above stated suit property to 3rd person on the basis of above stated transfer deed.”

Mr. Kanwal Goyal, learned counsel appearing on behalf of the appellant submitted that the aforementioned suit was filed on the premise that the property at the hands of Naseeb Kaur was ancestral as some other property bearing killa No.242//16(8-0),17(7-13)24(2-12)25(4-7)243//20/2(0-12)21/1(0-8) measuring 23 kanals 12 marls situated at village Mehlan was previously sold and later on, the suit property described in the head note of the plaint was purchased in the name of defendant No.5. Therefore, the plaintiff had 1/6th share and the distribution of the property in favour of the sons giving respective shares vide transfer deed dated 14.10.2008 by defendant No.5 was not in equal proportion, though the appellant-plaintiff also got some piece of land. In fact, the property had already been partitioned and roznamcha was entered on 29.09.1998. For the reasons best known, the counsel appearing for the plaintiff did not place on record/prove any evidence with regard to the aforementioned family partition, therefore, it has seriously prejudiced right of the plaintiff for adjudication of the *lis* and in this backdrop of the matter, the application under Order 41 Rule 27 CPC has been preferred.

He further submitted that during the pendency of the appeal before the lower Appellate Court, an application under Section 151 (Annexure A-5) was filed vide which the judgment dated 10.05.2011 rendered by the District Judge, Sangrur preferred against the judgment and decree of the trial Court dated 12.06.2010 in Civil Suit No.591/2004 titled as “Jagjit Singh VS. Drashan Singh and others” sought to be placed on record wherein Jagjit Singh, who was the plaintiff and defendant No.4 in the present suit, had sought to place on record a memorandum of partition dated 29.09.1998 but the same was not allowed despite the fact that cognizance of the same was taken. Though the nomenclature of the provisions of Section 41 Rule 27 CPC was not mentioned but it basically amounted to placing on record additional evidence and therefore, the lower Appellate Court was in obligation to decide the application along with the appeal and having failed to do so, in view of the settled law, the matter requires to be remitted.

There is a misc. application bearing No.12630-C of 2015 seeking permission of this Court to place on record roznamcha as already indicated above and other sale deeds dated 31.03.2004 and 17.12.2007 accompanied by affidavits of the defendants i.e. Jagjit Singh-defendant No.4 and Dharam Singh-defendant No.2, which show that part of the property in dispute/subject matter of the transfer deed had already been sold to the plaintiff's sons and therefore, Naseeb Kaur-defendant No.5 had not any right or title in the aforementioned property, has been filed on the premise that all these pleadings and arguments, if taken on record and noticed, would enable this Court to adjudicate upon the controversy effectively. Even otherwise the judgments and decrees of the Courts below are not sustainable in view of

the fact that the contradictory stand had been taken in the previous suit as well as in the present suit.

I have heard learned counsel for the appellant and appraised the paper book. Before dealing with the arguments of Mr. Goyal on merits, it would be in the fitness of things to refer Annexure A-5 moved under Section 151 CPC for placing on record the judgment and decree dated 10.05.2011 passed in civil appeal titled as "Jagjit Singh Vs. Darshan Singh etc.", which reads as under:-

"In the Court of Additional District Judge, Sangrur

Sher Singh Vs. Baghera Singh

Civil Appeal

Application u/s 151 CPC for placing on record the certified copy of the judgment and decree dated 10.05.2011 passed by Sh. M.S. Chauhan, District Judge, Sangrur in civil appeal Jagjit Singh Vs. Darshan Singh etc.

Sir,

The application is submitted as under:-

- 1. That the above noted appeal is fixed for today.*
- 2. That the appellant wants to produce the certified copy of the above said judgment and decree on the file which is very much relevant and material for just decision of the case. The Hon'ble Court has ample power to allow the parties to the litigation to place on record any document on the file which is material for the just decision of the case, at any stage and no prejudice will be caused to the other party.*

It is, therefore, prayed that application may kindly be accepted and appellant may kindly be allowed to place on record the certified copy of the above said judgment and decree.

Dated:6-4-2015

*Submitted by:-
Sher Singh
Appellant”*

The aforementioned application does not suffice the requirements of Order 41 Rule 27 CPC for want of pleadings with regard to sufficient cause for not placing on record the aforementioned documents earlier. Even if the lower Appellate Court taken the cognizance of the same, it would have been immaterial whether the Appellate Court decided the same along with appeal or not, because it sans merit. The attempt of remitting the matter back to the lower Appellate Court for effective adjudication of *lis* is wholly untenable and hereby rejected.

Vis-a-vis the misc. application bearing No.12630-C of 2015 for placing on record the sale deeds as indicated above, a specific query was raised to Mr. Goyal whether the sale deed was ever pleaded in the plaint dated 25.10.2008. On going through the plaint, he apprised this Court that there were no such pleadings. Even if this Court find some substance in the arguments of Mr. Goyal, allowing the application for placing on record the aforementioned documents, in my view and as per the settled law, would be beyond pleadings and tantamount to *de novo* trial. The beneficiary purportedly to have acquired the title of the sale deeds never assailed the transfer deed. As regards the *roznamcha*, it is pleaded fact that no reasons have been assigned as to how and in what manner, the aforementioned *roznamcha* would help the appellant-plaintiff when no steps had been taken to place on record the same by way of additional evidence before the lower

Appellate Court. Even jamabandies tendered in the Court, though carry presumption of truth as per Section 44 of the Punjab Land Revenue Act have been rebutted by defendants by proving on record the partition deed, which fact has also not been controverted by the plaintiff. Therefore, in my view, consideration of the application under Order 41 Rule 27 CPC would be a farcical exercise as the appellant-plaintiff has miserably failed to prove specific pleading of the application, thus, the same is hereby dismissed.

On merits, I am of the view that no evidence has been placed on record to show nature and character of the property being ancestral, having been sold way back and purchased in the name of defendant No.5. As per provisions of Section 14(1) of the Hindu Succession Act, Naseeb Kaur-defendant No.5 had become absolute owner of the property and she could alienate the property in the manner she wanted. During her life time, no challenge was made to the transfer deed in the name of the sons. In my view, the grievance of the appellant-plaintiff was only with regard to disproportionate share and once, having failed to prove that the property being ancestral in the hands of Naseeb Kaur, he would not have any right by birth having a share to the extent of $\frac{1}{6}^{\text{th}}$ as being sought to be projected and proved. It was incumbent upon the plaintiff to place on record the excerpt to show character and nature of the property being devolved to 3rd generation in lineage to claim the right by birth. Any act done by the absolute owner cannot be challenged, by any sibling, as such action would be on account of sweet will and whim of the testator.

In my view, both the courts below have rendered finding of fact based upon the preponderance of evidence. The arguments raised by the counsel for the appellant and noticed by this Court as aforementioned were

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not able to make a point to enable this Court to adopt a different approach than the one already adopted by the Courts below, much less, no substantial question of law arises for determination by this Court. Resultantly, the second appeal is dismissed. However, it is observed that the appellant-plaintiff shall be at liberty to claim the ownership of the property transferred in his favour as per transfer deed dated 13.10.2008 as per terms and condition of the transfer deed, if permissible, in accordance with law.

(AMIT RAWAL)
JUDGE

January 16, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	Yes