

(2010) 10 P&H CK 0131

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3972 of 2010

Jorawar Singh @ Jawahar Singh

APPELLANT

Vs

Navjot Singh and Others

RESPONDENT

Date of Decision : 11-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3A

Citation : (2011) 161 PLR 465

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Defendant No. 2 Jorawar Singh alias Jawahar Singh having remained unsuccessful in both the courts below has filed the instant second appeal.

2. Suit was filed by Respondents No. 1 to 4 - Plaintiffs against Appellant-Defendant No. 2 and against Gurdeep Kaur Defendant No. 1/Respondent No. 5 and Rajinder Singh Respondent No. 6/Defendant No. 3. It is undisputed that Pritam Singh had four sons namely Zail Singh, Jasvir Singh Plaintiff No. 4, Jorawar Singh Defendant No. 2-Appellant and Rajinder Singh Defendant No. 3 and a daughter Gurdeep Kaur Defendant No. 1. Plaintiffs No. 1 and 2 are sons of Zail Singh whereas Avtar Singh Plaintiff No. 3 is son of Plaintiff No. 4 Jasvir Singh. Pritam Singh predecessor of the parties was owner of the suit land measuring 20 kanals 19 marlas. Defendant No. 2 obtained consent decree dated 14.8.1991 against his father Pritam Singh whereby Defendant No. 2 herein was declared owner in possession of the entire suit land measuring 20 kanals 19 marlas. The Plaintiffs in the instant suit have challenged the said decree alleging that the suit land was ancestral coparcenary property of the parties. They are in joint possession thereof. Defendant No. 3 is mentally upset and therefore, he has no share in the suit property. Pritam Singh had inherited the suit land from his own father Ran Singh. After the death of Pritam Singh, the suit property came to

his three sons and one daughter (excluding Defendant No. 3 being mentally upset). Plaintiffs No. 1 and 2 got the share of their father Zail Singh and accordingly they have 1/4th share in the suit land, Similarly, Plaintiffs No. 3 and 4 have 1/4th share therein. Accordingly, declaration was sought regarding 1/4th share of Plaintiffs No. 1 and 2 and 1/4th share of Plaintiffs No. 3 and 4 in the suit land.

3. Only Defendant No. 2 contested the suit. It was pleaded that Pritam Singh had disinherited Plaintiff No. 4 from his properties by making advertisement in Newspaper and therefore, Plaintiff No. 4 had no share in the suit land. It was denied that the suit property is ancestral coparcenary property. It was pleaded that Plaintiffs and Defendants No. 1 and 3 have no share in the suit property and only Defendant No. 2 is owner in possession thereof since, the date of consent decree dated 14.8.1991. Various other pleas were also raised.

4. Learned Civil Judge (Junior Division), Kharar vide judgment and decree dated 15.3.2007 held that the suit land was ancestral coparcenary property and was inherited by five heirs of Pritam Singh in equal shares i.e. 1/5th share each by Zail Singh (predecessor of Plaintiffs No. 1 and 2), Jasvir Singh Plaintiff No. 4 and by the three Defendants whereas Plaintiff No. 3 who is son of Plaintiff No. 4 did not inherit any share. Accordingly, the suit was decreed partly declaring parties to be owners in possession of 1/5th share each instead of 1/4th share each sought by the Plaintiffs. It was held that Plaintiffs No. 1 and 2 have 1/5th share in the suit land and Plaintiff No. 4 and all the three Defendants have 1/5th share each in the suit land. First appeal preferred by Defendant No. 2 has been dismissed by learned Additional District Judge (Fast Track Court), Ropar vide judgment and decree dated 7.9.2010 and cross objections preferred by the Plaintiffs in the said first appeal have been allowed to the extent that the sale deeds if any executed by Defendant No. 2 in excess of his share in the suit land shall have no effect on the rights of the Plaintiffs. Feeling aggrieved, Defendant No. 2 has preferred the instant second appeal.

5. I have heard learned Counsel for the Appellant and perused the case file.

6. It is amply established on record that suit land was ancestral coparcenary property in the hands of Pritam Singh, predecessor of the parties, having been inherited by him from his own father Ran Singh. Even Defendant No. 2 Appellant himself admitted this fact in the witness box. Plaintiffs have also led oral evidence to this effect. Moreover, Plaintiffs have examined Bahadur Singh PW2 Special Kanungo who prepared excerpt Ex. PW2/A. The said excerpt also proves that Pritam Singh had inherited the suit land from his father Ran Singh. Even counsel for the contesting Defendant No. 2 Appellant conceded in the trial court that the suit land is ancestral coparcenary property of the parties. In fact Defendant No. 2 himself had pleaded in his suit against his father wherein decree dated 14.8.1991 was passed, that the suit land is ancestral coparcenary property.

7. Thus, there is ample documentary and oral evidence including the admission

of Defendant No. 2 himself that the suit land was ancestral coparcenary property in the hands of Pritam Singh. Consequently, by suffering consent decree dated 14.8.1991, Pritam Singh could not have transferred the entire suit land in favour of Defendant No. 2 Appellant alone. Consequently, consent decree dated 14.8.1991 suffered by Pritam Singh in favour of Defendant No. 2 alone has been rightly held to be null and void qua the share/rights of the Plaintiffs and Defendants No. 1 and 3. The suit of the Plaintiffs has, therefore, been rightly decreed by the courts below. Learned Counsel for the Appellant relying on judgment of this Court in the case of Smt. Shanti Devi (Dead) represented by LR v. Gian Chand 2008 150 PLR 393 contended that consent decree dated 14.8.1991 could not be challenged by way of separate suit, in view of bar created by Order 23 Rule 3A of the Code of Civil Procedure. The contention is completely misconceived. It is correct that parties to the compromise decree cannot challenge the same by way of separate suit, but in the instant case, the Plaintiffs were not party to the consent decree dated 14.8.1991 and therefore, Plaintiffs could challenge the same by way of separate suit only and the instant separate suit filed by the Plaintiffs is not barred by Order 23 Rule 3A of the Code of Civil Procedure.

8. Learned Counsel for the Appellant contended that the sale deeds executed by the Appellant during pendency of the suit could not be set aside without impleading vendees as party. This contention is also misconceived and bereft of any merit. Learned Counsel for the Appellant stated that the sale deeds were executed in the year 2006 i.e. during the pendency of the suit. Consequently, the said sale deeds are hit by doctrine of lis-pendens and the decrees of the courts below are binding on vendees also, even if the vendees were not impleaded to the suit. Besides it, this plea cannot be raised by Defendant No. 2 - Appellant himself who executed the sale deeds.

9. Moreover, Defendant No. 2-Appellant could not transfer better title to the vendees than Defendant No. 2 himself had. Defendant No. 2 could not sell land in excess of his share. For this reason as well, the sale deeds have been rightly set aside to the extent of being in excess of the share of Defendant No. 2. Obviously, the said sale deeds executed by Defendant No. 2 could not effect share or rights of the Plaintiffs.

10. Both the courts below after appreciating evidence have recorded concurrent finding against Defendant No. 2-Appellant. The said finding is fully justified by evidence on record and is supported by cogent reasons. The said finding cannot be said to be illegal or perverse in any manner so as to call for interference in the second appeal. No question of law much less substantial question of law arises for determination in the instant second appeal. The appeal is completely frivolous and devoid of any merit and is accordingly dismissed in limine.