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(2011) 05 P&H CK 0252

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2060 of 2011 (O and M)

Raj Singh and Others	APPELLANT
Vs	
Gurdeep Kaur and Others	RESPONDENT

Date of Decision: May 10, 2011

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

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

CM No. 5752 C of 2011

1. Allowed as prayed for.

RSA No. 2060 of 2011

2. This is second appeal by some legal representatives of original Plaintiff Jeet Singh since deceased having remained unsuccessful in both the courts below. It is undisputed that Shingara Singh, Sunder Singh and Havela Singh were real brothers. Jeet Singh Plaintiff and Dalip Singh (since deceased and represented by Defendants No. 3 to 8) were sons of Shingara Singh. Plaintiff''s case is that only Plaintiff Jeet Singh and Dalip Singh were the legal heirs of Shingara Singh and inherited his land in equal shares i.e. half share each. The Plaintiff pleaded that Gurdeep Kaur Defendant No. 1 is daughter of Sunder Singh and is not daughter of Shingara Singh. Plaintiff, therefore, alleged that inheritance mutation No. 1496 of Shingara Singh sanctioned on 19.5.1997 in favour of Jeet Singh, Dalip Singh and Gurdeep Kaur Defendant No. 1 to the extent of 1/3rd share each is null and void to the extent of share of Gurdeep Kaur and in fact, it should have been sanctioned in favour of Jeet Singh and Dalip Singh only to the extent of half share each. Sale of 1 kanals 3 marlas by Defendant No. 1 to Defendant No. 2 was also, therefore, pleaded to be null and void.

Defendant No. 1, however, alleged that Karam Kaur wife of Shingara Singh had died in Pakistan i.e. before partition of the country. Similarly, Sunder Singh husband of Harbans Kaur had also died. Thereafter, Harbans Kaur performed marriage with Shingara Singh and out of this wedlock Gurdeep Kaur Defendant No. 1 was born. Defendant No. 1, thus, alleged to be daughter of Shingara Singh. It was accordingly pleaded that inheritance mutation of Shingara Singh has been rightly sanctioned in favour of Jeet Singh, Dalip Singh and Gurdeep Kaur Defendant No. 1. Consequently, sale deed by Defendant No. 1 in favour of Defendant No. 2 is also legal and valid.

3. Defendant No. 2 also pleaded similar version. Defendant No. 2 also claimed to be bonafide purchaser of the suit land for valuable consideration.

4. Learned Civil Judge (Senior Division), Patiala vide judgment and decree dated 17.10.2008 dismissed the Plaintiff''s suit. First appeal preferred by the Plaintiff through legal representatives has been dismissed by learned Additional District Judge, Fast Track Court, Patiala vide judgment and decree dated 23/25.3.2011. Feeling aggrieved, legal representatives of the Plaintiff have filed the instant second appeal.

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

6. Both the courts below have recorded very elaborate judgments by dissecting the evidence very minutely. Both the courts below have recorded concurrent finding to the effect that Gurdeep Kaur is daughter of Shingara Singh. The said finding is based on appreciation of evidence led by the parties. Defendant No. 1 has led sufficient documentary evidence also to depict that she is daughter of Shingara Singh. Consequently, concurrent finding recorded by the courts below does not warrant interference in exercise of second appellate jurisdiction because it is finding of fact and lower appellate court is the final court of fact. Even otherwise the aforesaid finding cannot be said to be illegal or perverse nor it is based on misreading or misappreciation of evidence.

7. It may be added that inheritance mutation of Shingara Singh was sanctioned in favour of Plaintiff Jeet Singh, Dalip Singh and Defendant No. 1 Gurdeep Kaur on 19.5.1997 and the same remained unchallenged till filing of the suit on 7.2.2001 i.e. for almost four years. Plea of the Plaintiff that he was ignorant about sanction of the said mutation in favour of Defendant No. 1 also is wholly unacceptable because Defendant No. 1 was also in possession of the suit land of her share. If Defendant No. 1 had no right, title or interest in the suit land as pleaded by the Plaintiff, Defendant No. 1 could not have been in possession of any part of the suit land but since she was in possession thereof, the Plaintiff cannot plead ignorance of sanction of inheritance mutation of Shingara Singh. If Defendant No. 1 had not been daughter of Shingara Sigh, the Plaintiff would not have remained silent for almost four years to file the suit.

8. In addition to the aforesaid, Defendant No. 2 is also bonafide purchaser of the suit land for valuable consideration. For this added reason also, the Plaintiff cannot succeed. The suit land stood in the name of Defendant No. 1 in the revenue record. Plaintiff admitted that Defendant No.

9. Learned Counsel for the Appellant contended that no witness of alleged Kareva marriage of Harbans Kaur with Shingara Singh has been examined. Obviously no such witness could be available after passage of more than five decades. So, no such witness could be examined. On the contrary, Defendant No. 1 was depicted to be daughter of Shingara Singh in school admission record long before the death of Shingara Singh. She was also depicted to be daughter of Shingara Singh in the voters list.

10. For the reasons aforesaid, I find no ground to interfere with the concurrent finding recorded by the courts below to non-suit the Plaintiff.

11. No question of law much less substantial question of law arises for adjudication in the instant second appeal. The appeal lacks any merit and is accordingly dismissed in limine.