

(2010) 10 P&H CK 0316

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2157 of 2006 (O and M)

Ruggi and Another

APPELLANT

Vs

Smt. Chamela and Others

RESPONDENT

Date of Decision: Oct. 25, 2010

Acts Referred:

- Hindu Succession Act, 1956 - Section 6, 8

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

The Appellants, who were Defendants Nos. 1 and 2 before the trial Court, have approached this Court by way of this appeal challenging the judgment and decree of the Lower Appellate Court, whereby suit of the Plaintiff-Respondents Nos. 1 to 4 was decreed.

2. Respondents Nos. 1 to 4 brought the suit seeking decree of declaration to the effect that they are joint owners in possession of the property in dispute to the extent of 4/9th share and the sale deed dated 18.04.1995 executed by Respondents Nos. 3 to 7(Defendants Nos. 3 to 7) in favour of the Appellants was illegal and not binding upon their rights to the extent of their share. A decree for injunction was also prayed restraining the Appellants from raising any construction over the suit property.

3. It was averred in the suit property that the property in dispute which is within the Abadi Deh of the village was ancestral property of the Respondents/Plaintiffs which was inherited by them after the death of Shibha(their father). The suit was contested by the Appellants raising various preliminary objections. On merits, it was submitted that they were owners in possession of the suit property on the basis of the sale deed dated 18.04.1995 being bona fide purchasers with valuable consideration.

4. After hearing learned Counsel for the parties and perusing the evidence on record, the trial Court dismissed the suit. However, on an appeal filed on behalf of the Plaintiff-Respondents Nos. 1 to 4, the judgment of the trial Court was set aside by the Lower Appellate Court holding that the suit property was ancestral and the Plaintiff-Respondents were entitled to a share of 1/54th share each as Section 6 of the Hindu Succession Act was applicable in the present case.

5. Feeling aggrieved from the aforesaid judgment and decree of the Lower Appellate Court, Defendants No. 1 and 2 have filed the instant appeal. Plaintiff-Respondents Nos. 1 to 4 have also filed cross-objections against the judgment and decree of the Lower Appellate Court claiming that the Respondents were entitled to 1/9th share each and the Lower Appellate Court has wrongly held that the property in dispute was coparcenary property.

6. I have heard learned Counsel for the parties. In the present case, the matter in controversy revolves around the fact as to whether the plot in dispute is ancestral property of Plaintiffs and Defendants Nos. 3 to 7 which was inherited by them after the death of their predecessor-in-interest, Shibha, or not.

7. Admittedly, the plot in dispute was inherited by the Plaintiffs and Defendants No. 3 to 7 from their forefathers and thus after the death of Shibha, Plaintiffs along with others were joint owners in possession to the extent of their share. There is no evidence on record to prove that Plaintiffs have sold their share to the Defendants/Appellants. Thus, no fault can be found with the findings of the Lower Appellate Court holding that Plaintiffs/Respondents were joint owners of the suit property, along with other co-sharers i.e. Defendants Nos. 3 to 7.

8. Now, the only question remains as to the determination of share of parties in the suit property. The Lower Appellate Court applied Section 6 of the Hindu Succession Act and determined the share of the Plaintiff-Respondents to the extent of 1/54th share each. However, learned Counsel for the Respondents has challenged the aforesaid determination of share in favour of Respondents Nos. 1 to 4 on the ground that Section 6 of the Hindu Succession Act was not applicable in the present case and the share of the Plaintiff-Respondents should have been determined on the basis of Section 8 of the Hindu Succession Act and the Respondents were entitled to 1/9th share, instead of 1/54th share, each.

9. The arguments raised by learned Counsel for the Respondents/cross-objectors is without any merit.

10. Admittedly, Shibha, predecessor-in-interest of Plaintiffs and Defendants Nos. 3 to 7 had expired prior to execution of impugned sale deed and thus, property in question, which was ancestral, was not partitioned during the life time of Shibha. In this view of the matter, Plaintiffs being daughters of Shibha, since deceased, have sufficient interest in the suit property. In the instant case as noticed above, nature of property in dispute is ancestral one and Shibha died intestate, thus, Section 6 of the

Act which deals with devolution of coparcenary interest of a male Hindu dying after the Act, in an undivided Mitaksra coparcenary was rightly applied.

11. In view of the aforesaid reasons, I find no merit in this appeal.

12. No substantial question of law arises.

13. Both the appeal as well as cross-objections stand dismissed.