

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****221****RSA-5621-2014 (O&M)****Date of decision: 16.01.2025****Smt. Saroj & Another****...Appellant(s)****Vs.****Smt. Mausam & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. R.A. Sheoran, Advocate
for the appellants.

*********NIDHI GUPTA, J.**

The plaintiff/appellant no.1, is in second appeal before this Court laying challenge to the concurrent findings returned by the learned Courts below, whereby vide judgment and decree dated 23.02.2012 passed by the learned Additional Civil Judge (Senior Division), Loharu; duly affirmed in appeal by the learned Additional District Judge, Bhiwani vide judgment and decree dated 23.08.2014, the suit of the plaintiff for declaration and permanent injunction, has been dismissed.

2. The parties shall be referred to as per their status before the learned courts below.

3. Brief facts of the case are that the plaintiff filed the present suit for declaration and permanent injunction that the Sale Deed No.1263 dated 08.02.2008 (Ex.P1), executed by defendant No.8 in favour of defendant No.7 regarding the suit land and subsequent mutation No.651 dated 24.02.2008 is without jurisdiction and not binding on the rights of the plaintiff and the result of collusion of defendants No.7 and 8; **and** the



alleged Sale Deed No.39 dated 24.04.2009 (Ex.P2) executed by defendant No.7 in favour of defendants No.1 to 6 regarding the suit land and subsequent mutation No.672 dated 05.05.2009 is not binding on the rights of the plaintiff; **and** further consequential relief of permanent injunction restraining the defendants No.1 to 6 from further alienating the suit land. The facts as set out in the plaint are that Defendant no.8 namely Magha Ram who is husband of the plaintiff and father of appellant No. 2 herein, was owner in possession of the land in dispute. The land in dispute was coparcener property in the hands of Magha Ram. He was having his wife namely Kesar Devi and from their wedlock, one daughter was born, namely Sumitra/ defendant no.7. Said Magha Ram, after the death of his wife Kesar Devi contracted second marriage with the plaintiff-appellant No. 1 (hereinafter referred to as 'the plaintiff') on 7.7.2006. The plaintiff came to know that Sumitra got the land transferred in her favour vide sale deed dated 8.2.2008 and Sumitra further sold the same to defendants No. 1 to 6 vide sale deed dated 24.4.2009. Thus, the land which is ancestral property has been got transferred by Sumitra in her favour without any consideration and legal necessity. As such, the plaintiff challenged both the sale deeds, and mutations registered on the basis of above said sale deeds, by way of the present suit.

4. Upon notice, the defendants No.1 to 6 put in appearance and filed written statement denying the claim of the plaintiff on various grounds. In the joint written statement, the defendants no.1 to



6denied that the plaintiff was the legally wedded wife of defendant no.8 as the plaintiff was already the wife of one Jaipal. It was further asserted that defendant no.8 was incapable of having children due to his illness; it was denied that the suit land was ancestral in nature. The defendants resisted the suit by stating that defendant no.7/ Sumitra had purchased the suit land from defendant No.8 vide Sale Deed No.1263 dated 08.02.2008 for a sale consideration of Rs.29,91,000/- with delivery of possession and mutation No.651 on its basis also sanctioned in her favour on 24.02.2008. Since the price of the land increased, so she sold the same to defendants No.1 to 6, for a sale consideration of Rs.55,00,000/- with delivery of possession. A separate written statement was filed by defendant No.8 admitting the claim of the plaintiff.

5. On the basis of the pleadings of the parties, following issues were framed on 01.11.2010: -

“1. Whether the alleged sale-deed no. 1263 dated 8.2.2006 executed by defendantno.8 in favour of defendantno.7 regarding suit land and mutation no.651 sanctioned on the basis of said sale-deed and further the sale-deed no.39 dated 24.4.2009 executed by defendant no.7 in favour of defendants no. to 6 regarding suit land and mutation no.672 sanctioned on its basis, are illegal, null & void, against law & facts, not binding on the rights of the plaintiff, as alleged in the head-note of the plaint, if so, to what effect?OPP.

2. Whether the suit is not maintainable in the present form?OPD.



3. *Whether the Civil Court has no jurisdiction to try and decide the present suit?OPD.*

4. *Relief.”*

6. On the basis of oral and documentary evidence adduced by the parties, the learned trial Court decided issue No.1 against the plaintiff and in favour of the defendants; issues No.2 and 3 in favour of the plaintiff and against the defendants; and dismissed the suit of the plaintiff vide judgment and decree dated 23.02.2012.

7. Against the above said judgment and decree dated 23.02.2012, Civil Appeal No.164 of 2012/2013 was filed by the plaintiff and her minor son-Harkesh through his mother/plaintiff. However, the said appeal was dismissed by the learned Additional District Judge, Bhiwani vide judgment and decree dated 23.08.2014. Hence, present 2nd Appeal.

8. Learned counsel for the appellants submits that both the Courts below have totally ignored the legal position that there is no bar to challenge the Sale Deed by the wife in the lifetime of her husband because admittedly the land is ancestral and the same was got transferred by the defendant No.7 without consideration and without legal necessity. It is submitted that the wife can challenge the same and the authority relied by the learned trial Court is not applicable in the present case because in one case, it has been held that the daughters are not co-parcener and in the second case, it was held that wife is not entitled for any share in the property during the lifetime of her husband but it has not



been stated that wife cannot challenge the Sale Deed on the ground of fraud and misrepresentation and without legal necessity. Thus, the findings are erroneous.

9. On the other hand, learned counsel representing the defendants No.1 to 6/respondents No.1 to 6 herein submits that at the time of her marriage with defendant No.8 in 2006, the plaintiff was 30 years old; whereas the defendant No.8 was about 64 years old. It is further submitted that the defendants No.1 to 6 are bona fide purchasers of the suit property. The same has been purchased by the defendants No.1 to 6 one year and 2 months after the suit land was sold to defendant No.7 by defendant No.8. Even a mutation was sanctioned in favour of defendant No.7 on 24.02.2008. After purchase of the suit land by the defendants No.1 to 6 vide Sale Deed dated 24.04.2009 (Ex.P2) a mutation was entered in favour of defendants No.1 to 6 on 05.05.2009. It is submitted that both the Sale Deeds were duly proven in accordance with law. It is also pointed out that the plaintiff laid no challenge to the sale of the suit land by the defendant No.8 to defendant No.7 vide Sale Deed dated 08.02.2008 (Ex.P1); and the Civil Suit had been filed belatedly when defendant No.7 sold the suit land to defendants No.1 to 6 vide Sale Deed dated 24.04.2009 (Ex.P2). It is accordingly prayed that the present appeal be dismissed.

10. No other argument is raised on behalf of the appellants.



11. I have heard learned counsel for the appellants and perused the case file in great detail.

12. By way of the present suit, the plaintiff had inter-alia, laid challenge to the sale deed dated 8.2.2008, whereby defendant no.8 had sold the suit property owned by him to his daughter/defendant no.7. At the very outset, it may be pointed out that the defendants no.1 to 6/subsequent purchasers of the suit property, had questioned the existence of legal marriage between the plaintiff and defendant no.8. However the learned trial Court concluded that the marriage between the plaintiff and the defendant No.8 was valid as the first husband of the plaintiff namely Jaipal had expired as evident from Death Certificate (Ex.P11) and the marriage between the plaintiff and defendant No.8 was proven by the registered document (Ex.P9). Nonetheless, merely by being wife of defendant no.8 would assign no right to the plaintiff to challenge the sale deed executed by him as it is admitted fact on record that the defendant No.8/husband of the plaintiff is still alive. As such, during the lifetime of the defendant No.8, the suit of the plaintiff in respect of suit land in which she has no share, was not maintainable. Learned trial Court therefore, correctly held that the plaintiff although wife of defendant No.8, had no right to challenge the said Sale Deed (Ex.P1) on ground of having extraordinary right in the property of her husband. I am in complete concurrence with the observations of the learned Courts below that during the lifetime of her husband/defendant No.8, the plaintiff had



no right to challenge the Sale Deed dated 8.2.2008, and that the plaintiff was not within her legal capacity in doing so.

13. Moreover, it cannot be lost sight of that defendant No.8 had voluntarily sold the suit property as owner thereof vide Sale Deed No.1263 dated 08.02.2008 (Ex.P1), and no challenge was laid to the same by the plaintiff at that time. It is only when the suit property was further sold by defendant No.7 to defendants No.1 to 6 vide Sale Deed dated 24.04.2009 (Ex.P2) i.e. almost 1 1/2 years later, that the present suit came to be filed belatedly on 15.04.2010.

14. It was further alleged by the plaintiff that the suit property was ancestral in nature. However, upon appraisal of the entire oral and documentary evidence produced on record by the parties, the learned trial Court returned the finding that the entire sale property as mentioned in the main Sale Deed dated 08.02.2008 (Ex.P1) was not ancestral in nature, but was of mixed character being partly ancestral and partly self-acquired property of defendant No.8. Even as per the Revenue Record, the suit property was reflected to be a mixed character being partly ancestral and partly self-acquired. Absolute ownership of defendant no.8 over suit property was not denied. As such he was well within his rights in selling the same.

15. It was further alleged by the plaintiff that the sale deed dated 8.2.2008 was a forged and fabricated document. Admittedly, the said Sale Deed dated 08.02.2008 (Ex.P1) was executed by defendant No.8



in favour of defendant No.7 in respect of land measuring 79 kanals 15 marlas for a sale consideration of Rs.29,91,000/-.The allegation of the plaintiff was merely a bald statement and remained unproven as no evidence was presented in support. As such the impugned Sale Deed (Ex.P1) was taken as a bona fide document. No fraud or misrepresentation in respect of Ex.P1 could be proved. It, therefore, followed that defendants No.1 to 6 were bona fide purchasers of the suit property from defendant No.7 vide Sale Deed dated 24.04.2009 (Ex.P2) forvaluable sale consideration of Rs.55 lakh.

16. Learned counsel for the appellants is unable to dispute or controvert the above said evidence/findings or give any satisfactory explanation for the same.

17. In view of the above, present appeal is **dismissed**.

18. Pending application(s) if any also stand(s) disposed of.

16.01.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No