

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****112****RSA-945-2022 (O&M)****Date of decision: 27.02.2025****Mukesh & Others****...Appellant(s)****Vs.****Smt. Kitabo Devi & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Abhinav Sood, Advocate
for the appellants.

NIDHI GUPTA, J.

The plaintiffs are in Second Appeal against the concurrent judgments and decrees of the learned Courts below whereby their suit for declaration with consequential relief of joint possession and permanent injunction, has been dismissed by both the Courts below.

2. The parties shall here in after be referred to as per their status before the learned Trial Court i.e. the appellants as 'the plaintiffs' and the respondents as 'the defendants'.

3. Brief facts of the case are that the plaintiffs are the daughter of defendant no.6 namely Shamsheer Singh. The facts as set out in the plaint, are that the Defendant No.6 Shamsheer Singh and his son defendant no.7 namely Virender Singh are co-owners in joint possession as co-parceners in equal share of ancestral agricultural land comprising in half share of agricultural land (1 Kanal 1 Marla) and also owner of half share (5 kanal 12 marla) also owner of 3/16 share of agricultural land (8 kanal 0 marla), owner of half share (80 kanal 6 marla) and also owner of half share



(2 kanal 7 marla). Said Suit property is ancestral and co-parcenary property in the hands of defendant No.6. As such, Defendant No.6 was not competent to execute registered Sale Deed No.5417 dated 03.10.2008 (Ex.PW4/A) in favour of defendant No.1 in respect of part of the above suit property to the extent of 20K-0M, which is wrong and without any legal necessity so impugned sale is null and void; and subsequent mutation No.3278 sanctioned on basis of this Sale Deed is also ineffective. Further declaration was sought that Release Deed no. 7280 dated 8.3.2013, executed by defendant no.6 in respect of 26K-3M from the above Suit land in favour of defendants no.2 to 5 and the subsequent mutation no. 3420 is also null and void, and not binding on the rights of the plaintiffs and defendant no.7 as the same is executed and registered only to deprive the legal rights of the plaintiffs and defendant no.7.

4. Upon notice, the defendant No.1 appeared and filed written statement, resisting the suit by inter alia stating that defendant No.1 is owner in possession of the agricultural land measuring 20 kanal 0 marla, purchased by her from defendant No.6 - Shamsheer Singh vide Sale Deed dated 03.10.2008 for consideration of Rs.27,50,000/- in respect of which mutation No.3278 has been sanctioned in favour of defendant No.1. It is further stated in the written statement that Shamsheer Singh and his brother Kartar Singh had got the suit land by way of judgment and decree dated 14.12.1982 passed in Civil Suit No.636/1982 titled as "Shamsheer Singh & Others Vs. Kam Singh". Thus, the property was self-



acquired property; and thus, Shamsheer Singh was fully competent to sell the same or deal with it in any manner that he chose. It was denied that the plaintiffs and defendants No.6 & 7 are co-owners and are in joint possession as co-parceners in equal shares in the land in dispute; or that the land in dispute is ancestral agricultural land; or that the defendant No.1 has inherited this property from her father, grandfather and great grandfather but in fact the defendant No.1 is owner in possession of the agricultural land measuring 20 kanal 0 marla which she had purchased vide Sale Deed dated 03.10.2008 from Shamsheer Singh for a consideration of Rs.27,50,000/- and also for legal necessity. It is further stated in the written statement by defendant No.1 that the sale consideration was used by Shamsheer Singh for installing tube-well and to pay the loan amount of State Bank of India, Village Shodhapur branch and he has also constructed a house and has constructed the boundary wall in the other land. The sale deed dt. 03.10.2008 has been executed and registered with the consent of the plaintiffs as they are residing in the same house and the plaintiffs were also consenting party and everything was in the knowledge of the plaintiffs from the very beginning. It is denied that the sale deed dt. 03.10.2008 has been executed and registered wrongly, illegally, without legal necessity and not in the benefit of their estate, but in fact, the sale deed has been executed for the benefit of the family and for legal necessity and the sale consideration was handed over to Shamsheer Singh by the answering defendant no. 1. The answering



defendant no. 1 made a thorough inquiry before purchasing the land in dispute from defendant no. 6 and from the revenue department as well as from the office of Sub-Registrar Panipat. It is replied that the land measuring 26K-3M has already been transferred by Shamsher Singh in favour of the defendants no. 2 to 5 by way of release deed (Ex.PW4/B). It is denied that the answering defendant is alienating or transferring her land to any other person. Rest of averments made in the plaint was denied and defendant no. 1 prayed for the dismissal of the suit.

5. Defendants No.2 to 5 and 7 filed their joint written statement inter alia stating that defendants No.2 to 5 are owners in joint possession of ancestral agricultural land as fully mentioned in Relinquishment Deed No.7280 dated 08.03.2013 and the plaintiffs are not owners in possession of the suit land. It was admitted that the suit land is ancestral and co-parcenary property of defendant No.6. However, defendant No.6 was a man of bad habits, addicted to wine and gambling. It was denied that defendant No.6 had executed any registered Sale Deed No.5417 dated 03.10.2008 in favour of defendant No.1. It was contended that Sale Deed if any executed by defendant No.6 in favour of defendant No.1 is false and bogus; and the Release Deed is legal and valid one. Rest of the averments in the plaint was denied; and dismissal of the suit was prayed for.

6. On the basis of pleadings of the parties, following issues were framed by the learned trial Court vide order dated 09.10.2013:-



- “1 Whether the plaintiff is entitled to the decree for declaration with consequential relief of joint possession as prayed for in the prayer clause of the plaint? OPP*
- 2. If the issue no. 1 is proved in favour of plaintiff, whether the plaintiffs are entitled to a decree for permanent injunction as prayed for in the prayer clause of the plaint? OPP*
- 3. Whether the suit of the plaintiffs have no locus standi to file the present suit? OPD*
- 4. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD*
- 5. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 6. Whether the plaintiffs have not come with clean hands and they have suppressed the material facts and true from the Court? OPD*
- 7. Relief.”*

7. On the basis of arguments/ pleadings, and oral and documentary evidence brought on record by the parties, the learned trial Court decided issues No.1 and 2 against the plaintiffs and in favour of defendants; issues No.3 to 6 against the plaintiffs and in favour of the defendants; and accordingly vide judgment and decree dated 09.11.2017, suit of the plaintiffs was dismissed. The appeal filed by the plaintiffs was dismissed by the learned lower Appellate Court vide judgment and decree dated 15.11.2021 affirming the judgment and decree dated 09.11.2017 passed by the learned trial Court. Hence, the present second appeal.

8. Learned counsel for the appellants/plaintiffs assails the impugned judgments and decrees of the learned Courts below by inter



alia submitting that the same are against law and facts proved on file and therefore, not sustainable. It is submitted that issues No.1 and 2 were not inter-connected and required a separate finding. It is submitted that it is proven from Ex.PW5/A (Intkhab/excerpts) that suit land is ancestral property of defendant No.6. It is apparent from the excerpts Ex. PW5/A (Intkhab/excerpt) that the suit land is the ancestral property of the Plaintiffs also as the same has been inherited by Defendant No.6 through four degrees of male lineal ascendants. The excerpt carries evidence value u/s 35 of the Evidence Act and has been prepared by competent person of revenue department. Thus, defendant No.6 was not competent to sell the land of the plaintiffs. The learned Courts below have fallen into error of law in treating the property as self-acquired property of defendant No.6 in the absence of any documentary evidence produced by the defendant No.1; and hence the impugned judgments and decrees are not sustainable in the eyes of law.

9. It is further argued that no judgment & decree can change the nature of the suit property. It remains in the same stock. It is contended that the learned Courts below ignored that when in family settlement any share falls to a co-parcener in a family then the joint status as well as the nature of the property remains the same and family also remains joint. The joint status is broken only when there is partition by metes and bounds.Hence, the Ld. Courts have fallen in error of law in deciding that suit land is not ancestral property. It is also submitted that



the Ld. Courtshave fallen into error of law in deciding that the plaintiffs are not entitled to relief of permanent injunction. The Appellants are in possession of law by fiction of notional partition and by theory of joint Hindu family property. It is accordingly prayed that the impugned judgments and decrees of the learned Courts below be set aside.

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

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

12. Brief facts of the case are that the plaintiffs are the daughters of defendant No.6 Shamsheer Singh. Defendant no.7 namely Virender Singh is the son of Shamsheer Singh. Defendants No.2 to 4 are the sons and wife of defendant No.7, and defendant No.5 is the wife of Shamsheer Singh. By way of present suit, the plaintiffs challenged the Sale Deed No.5417 dated 03.10.2008 executed by defendant No.6 in favour of defendant No.1 for land measuring 20 kanal 0 marlas; and the subsequent mutation No.3278 in favour of defendant no.1. The plaintiffs have also laid challenge to the Release Deed No.7280dated 08.03.2013executed by defendant No.6 in favour of defendants No.2 to 5 for land measuring 26 kanal 3 marlas; and the subsequent mutation No.3420. Therefore, total suit land is 46 kanal 3 marlas.

13. It is the contention of learned counsel for the plaintiffs that the suit land could not have been disposed of in the above manner by



defendant No.6-Shamsher Singh on account of the fact that suit land was ancestral and co-parcenary property. It has been submitted that the plaintiffs had examined PW5-Rakesh Kumar, Patwari to prove the three degrees of inheritance establishing the ancestral nature; and therefore, the ancestral land as mentioned in the plaint could not have been disposed of.

14. The above contention of the appellants that suit land was ancestral in nature is liable to be outrightly rejected as admittedly, the plaintiffs had not produced any evidence to substantiate their contention. No such document was produced by the plaintiffs to demonstrate that suit property was ancestral. Even the Jamabandi (Ex.P1) placed on record by the plaintiffs does not depict the suit property as ancestral. On the contrary, it was the categorical pleaded case of defendant No.1 that the property in the hands of Shamsher Singh was self-acquired which had come to him through Civil Court decree. Even PW1 and PW3 had admitted in their cross-examination that suit property was partitioned by Kam Singh, father of Shamsher Singh and Kartar Singh. From the above facts, it would not be incorrect to infer that Shamsher Singh had acquired the disputed property through his father in a Consent Decree. As such, in view of the above facts, the suit property had lost its ancestral character, if any. Suit property had become separate property of Shamsher Singh. In any event, in view of the fact that the plaintiffs had failed to prove the ancestral nature of the suit property, the same was to be treated as self-



acquired property of Shamsheer Singh; and therefore, he was entitled to dispose the same of in any manner that he chose. As such, plaintiffs could not establish that Shamsheer Singh was not competent to execute the impugned Deeds.

15. Moreover, a validly registered Sale Deed dated 03.10.2008 (Ex.PW4/A) was executed by defendant No.6 in favour of defendant No.1 on receiving valuable sale consideration of Rs.27,50,000/-. It has further come on record that Shamsheer Singh had sold the said property for legal necessity; and the proceeds thereof were utilised by Shamsheer Singh for solemnising the marriage of his children, including the plaintiffs, and other related family purposes for installing tube-well and to pay the loan amount of State Bank of India, Village Shodhapur branch and he has also constructed a house and has constructed the boundary wall in the other land.

16. It is also to be noted that the impugned Sale Deed (Ex.PW4/A) is dated 03.10.2008; whereas present suit was filed by the plaintiffs on 10.04.2013. As such, the suit of the plaintiffs was time-barred. Moreover, it is admitted fact that defendant No.6 is still alive. Therefore, during his lifetime, plaintiffs could not have challenged the impugned Sale Deed (Ex.PW4/A) or the Relinquishment Deed (Ex.PW4/B). It has also come on record that the plaintiffs are not in possession of the suit land; and simplicitor suit for declaration without claiming possession is not maintainable.



17. As regards the testimony of PW5-Rakesh Kumar, Patwari, findings of the learned lower Appellate Court as contained in Para 16 of the judgment and decree dated 15.11.2021, are relevant. The same read as follows: -

"16. To prove the ancestral nature of the suit land, the appellants/plaintiffs have examined Rakesh Kumar, Patwari Moharar, who has proved the excerpts Ex. PW5/A. In his cross-examination, Rakesh Kumar (PW5) has stated that he did not know Urdu and that he could have read some words only and that he could not read anything except 1899 and that at the time of preparing the record, he had taken the help of retired Patwari namely Khazan Singh but Collector, Panipat had not appointed Khazan Singh Patwari for helping him and that Khazan Singh lived near Madhuban. Khazan. Singh Patwari has not been examined by the appellants/plaintiffs and therefore, Hindi Translation of the excerpts is not admissible in evidence. Further, in the excerpts Ex. PW5/A, a mutation no. 2580 is there, according to which, Kaam Singh son of Lichhu son of Nayadar suffered a decree in favour of Shamsher Singh, the present defendant no. 6 and Kartar Singh sons of Kaam Singh son of Lichhu regarding the suit land on 14.12.1982. When it is so, then the suit land lost its character of ancestral/coparcenary/joint Hindu family property and the properties including the suit land became the self acquired properties of the defendant no. 6 Shamsher Singh and his brother Kartar Singh and therefore, the defendant no. 6 Shamsher Singh was free to alienate the same in any manner. Therefore, it is not proved on record that the suit land was ancestral/coparcenary/joint Hindu family property in the hands of defendant no. 6 Shamsher Singh. Further, the defendant no. 6 Shamsher Singh has not chosen to contest the present suit and he was proceeded against exparte. No written statement has been filed by him. This clearly shows that the present suit has been filed by the plaintiffs in collusion with the defendant no. 6. Further, the plaintiffs are not in possession of the suit land and a simplicitor suit for declaration without claiming possession is



*not maintainable. Further, the impugned sale deed Ex. PW4/A is dated 03.10.2008 executed by the defendant no. 6 Shamsher Singh in favour of the defendant no. 1 Kitabo Devi and the present suit has been filed by the plaintiffs on 10.04.2013 and therefore, the suit of the plaintiffs, so far as the point of challenging the sale deed Ex. PW4/A is concerned, is time barred. Further, the defendant no. 6 is still alive and during his lifetime, the plaintiffs could not have challenged the impugned sale deed Ex. PW4/A or the relinquishment deed Ex. PW4/B. I have not dispute regarding the law laid down in **Smt. Rani and another versus Smt. Santa Bala Debnath and others AIR 1971 SC 1028** and **C.N. ArgunachalaMudaliar versus C.A. MuruganathaMudaliar 1945 Supreme Court Reports 244**, but the same are not applicable to the facts of the present case as the facts of the present case are quite different from the facts mentioned in the above said cases.”*

18. Learned counsel for the appellants is unable to dispute or controvert the aforesaid facts and findings.
19. In view of the above, the present appeal is **dismissed**.
20. Pending application(s) if any also stand(s) disposed of.

27.02.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No