

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : R. S. A. No. 239 of 2010

Date of Decision : January 31, 2011

Balraj Sharma and others Appellants
Vs.
Shanti and others Respondents

CORAM : HON'BLE MR. JUSTICE L. N. MITTAL

* * *

Present : Mr. Vivek Singla, Advocate
for the appellants.

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L. N. MITTAL, J. (Oral) :

Legal representatives of Vidya – original defendant no.4 have filed the instant second appeal.

Respondent no.1 – plaintiff Shanti filed suit seeking declaration and permanent injunction. The plaintiff claimed that she is owner in possession of one-third share of the suit land and that decree dated 17.07.1987 in Civil Suit No. 393 of 1987 is null and void and in the alternative, the plaintiff claimed joint possession of the suit land. The plaintiff also claimed permanent injunction restraining defendants no.1 and 2 from alienating the suit land.

Plaintiff is widow of Suraj Bhan – pre-deceased son of Babu Ram. Defendants no.1 to 5 are sons and daughters of Babu Ram, whereas defendant no.6 is daughter of plaintiff and her deceased husband Suraj Bhan. The plaintiff claimed that her husband Suraj Bhan had one-third share in the suit land, which has been inherited by the plaintiff. However, defendants no.1 and 2 obtained decree dated 17.07.1987 against Babu Ram. The suit land, being ancestral coparcenary property, could not be transferred by way of consent decree by Babu Ram in favour of defendants no.1 and 2.

Suit was contested by defendants no.1 and 2 only, who broadly denied the plaint allegations and defended consent decree dated 17.07.1987. Defendant no.4 (predecessor of the appellants) was proceeded ex-parte.

Learned Civil Judge (Junior Division), Gurgaon, vide judgment and decree dated 17.01.2008, decreed the plaintiff's suit declaring her to be owner in possession of 13/48th share in the suit land and declaring that decree dated 17.07.1987 and consequent mutation no.5179 dated 20.08.1987 are null and void and not binding on the rights of the plaintiff. Plaintiff was held entitled to joint possession of the suit land. Defendants were restrained from alienating the suit land till rectification of the said mutation and revenue records.

Legal heirs of defendants no.1 and 2 preferred first appeal

against judgment and decree of the trial court. Learned Additional District Judge, Gurgaon, vide judgment and decree dated 30.09.2009, allowed the appeal and set aside the judgment and decree of the trial court and dismissed the plaintiff's suit for declaration that she is owner of one-third share in the suit land and that decree passed in Civil Suit No. 393 of 1987 is illegal and null and void. However, plaintiff's suit has been decreed partly by the lower appellate court to the effect that plaintiff is entitled to 1½ acres land out of the suit land for her maintenance during her lifetime on the basis of agreement Ex.P-1 and that she is in possession of the suit property to that extent. Decree for permanent injunction restraining defendants from dispossessing the plaintiff from the suit property in her possession to the extent of 1½ acres land has also been granted. Feeling aggrieved, legal representatives of defendant no.4 have preferred the instant second appeal.

I have heard learned counsel for the appellants and perused the case file.

Learned counsel for the appellants vehemently contended that finding of the trial court that suit land was coparcenary property has been reversed by the lower appellate court without sufficient ground. The contention cannot be accepted at the instance of the appellants because their predecessor defendant no.4 did not contest the suit. Plaintiff in the suit claimed relief regarding her own rights only and did not claim any relief in

favour of defendant no.4. Defendant no.4 herself also did not make any counter claim by filing written statement. Consequently, no relief regarding any right of appellants in the suit land can be granted in the instant litigation. The instant second appeal at the instance of the appellants is thus misconceived and devoid of merit.

Learned counsel for the appellants contended that defendant no.4 died during the pendency of the suit and her legal representatives were not impleaded. The contention does not help the appellants because defendant no.4 herself was served in the suit and was ultimately proceeded ex-parte. If thereafter defendant no.4 died, the suit could proceed against her even if her legal representatives were not brought on record. This conclusion is result of amendment of Order 22 Rule 4 of the Code of Civil Procedure (in short – CPC) made by this Court. According to sub-rule 3 of Order 22 Rule 4 CPC, as substituted by this Court, if no application for impleading legal representatives of the deceased defendant is made within limitation period, the suit shall not abate as against the deceased defendant and judgment be pronounced notwithstanding the death and shall have the same force and effect, as if it had been pronounced before the death took place. Consequently, death of defendant no.4, after she was served and proceeded ex-parte in the suit, would not invalidate the judgment of the trial court notwithstanding that legal representatives of defendant no.4 were not

brought on record in the trial court.

For the reasons aforesaid, I find no merit in the instant second appeal. No question of law, much less substantial question of law, arises for determination in the instant second appeal. Accordingly, the appeal is dismissed in limine.

January 31, 2011

monika

(L. N. MITTAL)
JUDGE