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In the High Court of Punjab and Haryana at Chandigarh

RSA- 1403 of 2018 (O&M)
Date of Decision: 6.1.2020

Mehal Singh

---Appellant

versus

Tej Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Divanshu Jain, Advocate
for the appellant

Rekha Mittal, J.

Challenge in the present appeal has been directed against judgment and decree dated 29.8.2017 passed by the Additional District Judge, Patiala whereby appeal against the judgment and decree dated 13.8.2014 passed by the Additional Civil Judge (Senior Division), Samana was allowed, impugned judgment and decree was set aside and suit filed by Mehal Singh appellant seeking declaration and permanent injunction was dismissed.

Mehal Singh-appellant/plaintiff is the son of Tej Kaur-respondent-defendant No. 1. Tej Kaur is the widow of Joginder Singh. The suit property is recorded to be ownership of Tej Kaur in the jamabandi brought on record. She transferred the suit land in favour of her two sons namely Khushal Pal Singh and Tehal Singh-defendants No. 2 and 3. The appellant-plaintiff challenged the transfer deed executed by Tej Kaur in

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favour of aforesaid defendants primarily on the ground that suit land was joint Hindu family property of the parties of which Tej Kaur was the *Karta*. It is averred that Tej Kaur was not competent to transfer the suit property in the names of defendants No. 2 and 3 to the exclusion of appellant-plaintiff.

Counsel for the appellant would argue that Tej Kaur-defendant No. 1 in her written statement had not denied suit land to be joint Hindu family property, therefore, there was no requirement for the appellant-plaintiff to adduce any evidence in this regard. It is further argued that Tej Kaur in cross examination admitted that her husband died about 25 years back and after death of her husband, three brothers namely Mehal Singh, Tehal Singh and Khushal Pal Singh were doing occupation of joint cultivation. She further stated that no partition had ever taken place between three brothers. She admitted that her husband was holding the suit land but stated that land of her husband was also sold by her. It is vehemently argued that in view of admission made by Tej Kaur coupled with the facts elicited in her cross examination, it is established on record that suit land was joint Hindu family or ancestral property in which the appellant got a right by way of birth, therefore, Tej Kaur was not competent to alienate suit land by way of transfer deed executed in favour of defendants N o. 2 and 3, without consideration.

I have heard counsel for the appellant and perused the paper book particularly the documents annexed thereto.

Counsel, in response to a query, would fairly concede that no such document was produced on record as to how the suit land came to be mutated in the name of Tej Kaur. Assuming that Tej Kaur received the suit



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land from her husband by way of succession, the appellant-plaintiff never challenged inheritance in favour of his mother to exclusion of other class-I heirs of Joginder Singh, husband of Tej Kaur. There is also no evidence on record that Joginder Singh along with his sons particularly the appellant constituted joint Hindu family or the suit land was being treated as such during life time of Joginder Singh. The mere fact that after death of Joginder Singh, his three sons were jointly cultivating the suit land would not give suit land colour of joint Hindu family property. At the same time, admission by a contesting party with regard to nature of suit property would not enure to its benefit unless proved otherwise. Taking a cumulative view of the aforesaid discussion, I do not find an error much less perversity in the impugned judgment that would call for intervention.

To be fair to the appellant, counsel also made a vain attempt to argue that transfer deed was executed by Tej Kaur in favour of defendants No. 2 and 3 without payment of stamp duty etc. The appellant is no one to challenge transfer deed on this score because payment or non payment of stamp duty is a matter inter se the transferor and government because in case no proper stamp duty is paid, the authority concerned is competent to impound the document and ask for payment of proper stamp duty.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

6.1.2020

PARAMJIT Whether speaking/reasoned : Yes
Whether reportable : Yes/No