

O R D E R

Heard the learned counsels for the parties and perused the relevant material.

Leave granted.

This is a defendant's appeal against the modification of the decree of dismissal of the plaintiffs' suit.

The respondent, as the plaintiff, had instituted the suit for declaration, perpetual injunction and avoidance of sale deed dated 21.7.1971 executed by his father in favour of his elder brother who was impleaded as defendant no. 1 in the suit. According to the plaintiff, the property was ancestral property and, therefore, the alienation made by the father solely in favour of defendant no.1 was null and void.

The suit was resisted by the defendant contending that the property was a self-acquired property of the father and he was competent to execute the sale deed in favour of the defendant.

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Both the learned Trial Court as well as the First Appellate Court dismissed the plaintiff's suit. The High Court in second appeal, however, modified the decree, insofar as the land covered by Survey Nos. 153, 216 and 309 is concerned on the finding that the said land is ancestral. The plaintiff was found entitled to one-third share in the land covered by the aforesaid Survey Nos. Insofar as Survey Nos. 312, 324/1 and 328/1 are concerned, the decree was maintained. The aforesaid view of the High Court followed from the finding that the land covered by these three Survey Nos. 153, 216 and 309 was recorded in the name of Chinnu, grand father of the plaintiff and the defendant whereas in respect of land covered by remaining three Survey Nos. 312, 324/1, 328/1 there was no entry recorded in the name of Chinnu as the owner thereof.

The sole contention which needs to be addressed by the Court on the basis of rival submissions is whether the land covered under Survey Nos.153, 216 and 309, which has been held to be

ancestral property would devolve on the plaintiff even assuming

the land to be owned by Chinnu.

In this regard, learned Appellate

Court in its judgment came to the conclusion and had recorded the

finding that there is no evidence before it that the plaintiff was

born during the life-time of Chinnu. If that be so, naturally, the

plaintiff cannot acquire an interest in the property of Chinnu

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even before his birth. On the contrary the property must be

understood to have devolved on his father Sanvale (son of Chinnu)

giving him a right to alienate the property as has been done. The

aforesaid finding recorded on the basis of the materials and

evidence on record appears to have escaped the notice of the High

Court. In the absence of any evidence that the plaintiff was born

during the life-time of Chinnu, it cannot be held that the

property decreed by the High Court in favour of the plaintiff was

ancestral property so as to give any right to the plaintiff to the

same in a manner held by the High Court in the order under

challenge.

For the reasons aforesaid, we set aside the order of the

High Court insofar the same modifies the decree in favour of the

plaintiff and allow this appeal.

.....J.
[RANJAN GOGOI]

NEW DELHI
10TH JULY, 2014

.....J.
[M.Y. EQBAL]