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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA Nos.425 of 1997

Decided on : December 09, 2015

RAJBIR

....Appellant

VERSUS

VIRENDER SINGH AND OTHERS

....Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Narula, Advocate
for the appellant.

Mr. Tarunveer Vashist, Advocate
for the respondents.

AMIT RAWAL, J (ORAL)

The appellant-plaintiff is in Regular Second Appeal against the concurrent finding of fact whereby the suit for declaration in respect of the suit property challenging the judgment and decree dated 25.04.1986 passed in Civil Suit No.135 has been dismissed by both the Courts below.

Mr. S.S. Narula, learned counsel appearing on behalf of the appellant submits that the property at the hands of Chhatter Singh was ancestral in nature and therefore he could not have executed the afore mentioned decree except for legal necessity.

In this regard, the assistance of the lower Appellate Court was sought to place on record the Jamabandi and as well as Kursinama to show that the property at the hands of Chhatter Singh was ancestral by way of additional evidence. However, the said application has erroneously been dismissed, on the ground that the appellant-plaintiff had

not been able to explain the law despite exercise of due diligence Court. In case, it could not be brought on record before trial Court, the aforementioned additional evidence is taken on record, it would be proved that the appellant-plaintiff had a right by birth in the property and therefore the judgment and decree aforementioned in favour of defendant No.1 to 4 was not valid.

Thus, the appeal involves following substantial questions of law for determination by this Court:-

- i) Whether the suit property at the hands of Chhatter Singh was ancestral in nature?
- ii) Whether the judgment and decree in Civil Suit No.135 executed by Chhatter Singh in favour of defendant Nos.1 to 4 was without legal necessity or not?

Mr. Tarunveer Vashist, Advocate appearing on behalf of the defendants/respondents submits that plaintiff by leading an evidence in affirmative the Kanungo was summoned to bring the excerpt in order to show that the property at the hands of Chhatter Singh was ancestral but the Kanungo has not been examined nor any revenue excerpt and Kursinama. The additional evidence sought to be placed on record before the lower Appellate Court tantamounts to filling up the lacuna as in evidence legal right in favour of the defendants has already been accrued which cannot be taken away on account of the lapse of the appellant-plaintiff.

Thus, prays for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book.

It is a cardinal principle of law and as well as, as per the High

Court Rules and order in order to prove the property being ancestral in nature original excerpt from the concerned Revenue Department has to be brought on record through the testimony of the kanungo. No exercise much less any effort has been made. Even the additional evidence sought to be placed on record would not come to the rescue of the plaintiff for the reasons that valuable right has already accrued in favour of the defendants, even the application seeking additional evidence, are photocopy of the excerpt and the Jamabandi. Jamabandi itself is not sufficient in ascertaining the character and nature of the property being ancestral. The procedure of proving of excerpt has already been held in *Banta Singh & Others v/s Phuman Singh 1972 PLR 365*.

Since, the appellant-plaintiff has failed to prove the property at the hands of Chhatter Singh being ancestral. In my view, appellant-plaintiff has not been able to prove the conditions laid down in para 232 of the Hindu Law by Mulla.

Keeping in view the aforementioned facts, I do not intend to differ with the finding rendered by both the courts below which are based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate Court.

The substantial questions of law thus are answered in favour of the respondent-defendant and against the appellant-plaintiff.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

December 09, 2015

**(AMIT RAWAL)
JUDGE**