

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.1543 of 2010 (O&M)

Date of decision : 06.10.2015

Sukhjinder Singh

...Appellant

Versus

Balwinder Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Amit Jhanji, Advocate for the appellant.

Mr. Baljinder Singh, Advocate for respondent Nos.1 to 3.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is in present Regular Second Appeal against the concurrent findings of fact and law, whereby relief in a suit for joint possession, claiming 1/7th share in the estate held by Tej Kaur, has been declined.

Mr. Amit Jhanji, learned counsel appearing on behalf of appellant submits, that it is only in the year 2002, when appellant-plaintiff came to know about the judgment and decree dated 07.01.1981, which was allegedly suffered by Tej Kaur in favour of Balwinder Singh, Bhupinder Singh & Surinder Singh-respondents-defendants. Accordingly, suit was

filed. Since in the suit itself, it was pleaded that the property at the hands of Tej Kaur was ancestral, therefore, Tej Kaur could not have alienated the property in the manner and mode adopted/followed. Even in the present suit, defendants, admitted, that property at the hands of Tej Kaur came from her maternal uncle and to maternal uncle from his father, thus, in essence the property at the hands of Tej Kaur was ancestral, therefore, she did not have right to bequeath or part with the ownership in favour of defendants Nos.1 to 3 by excluding the claim of plaintiff.

He further submits that both the Courts below have committed illegality and perversity in not noticing the aforementioned fact and, therefore, substantial questions of law arises for determination by this Court.

Mr. Baljinder Singh, learned counsel appearing on behalf of respondent Nos.1 to 3 submits that Tej Kaur died on 02.05.1996. The decree aforementioned was in existence for almost 15 years. Tej Kaur never challenge the same. It would not lie in the mouth of the appellant-plaintiff to challenge the same, after five years, of the demise of Tej Kaur. There is no illegality and perversity in the findings rendered by both the Courts below.

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

It is now settled law that in order to prove the case, much less, averments made in the plaint, plaintiff has to stand on his own legs by leading direct and cogent evidence. No such evidence has been proved on record to show that property at the hands of Tej Kaur was ancestral. In the absence of the character and nature of the property being ancestral, property

at the hands of Tej Kaur at the best would be treated as self-acquired and she could part with the property to her liking and wish.

In my view, the suit filed in the year 2002 after the demise of Tej Kaur on 02.05.1996 was also not within a period of limitation. The appellant-plaintiff cannot challenge the decree dated 07.01.1981 by making averments that it was obtained by playing fraud or misrepresentation inasmuch as noticed above, Tej Kaur remained alive for almost 15 years and during her lifetime, she did not challenge the aforementioned decree.

I do not intend to differ with the findings arrived at by both the Courts below which are based on the appreciation of both oral and documentary evidence. I do not find any substantial questions of law to be determined by this Court.

In view of what has been observed above, present Regular Second Appeal is dismissed.

06.10.2015

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**(AMIT RAWAL)
JUDGE**