

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

RSA No.1794 of 2011 (O&M)

Date of decision : 18.02.2015

Rupinder Pal Singh

...Appellant

Versus

Avtar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.K. Singla, Advocate
for the appellant.

Ms. Maninder Kaur, Advocate for
Ms. Sonia G. Singh, Advocate for the respondents No.1 & 3.

Mr. Rajender Kumar, Advocate for
Mr. P.S. Dhaliwal, Advocate for the respondent No.4.

AMIT RAWAL, J. (Oral)

This Regular Second Appeal is directed at the instance of appellant-plaintiffs against the judgments and decrees passed by both the Courts below, whereby the suit claiming declaration being exclusive owner-in-possession of the land measuring 16 Kanal 2 Marla as per oral partition of Joint Hindu Family property was dismissed and appeal filed against the same has also been dismissed.

Mr. M.K. Singla, learned counsel appearing on behalf of the appellant-plaintiffs contends that both the Courts below have committed illegality and perversity in dismissing the suit and as well as the appeal as there was misreading of the oral and documentary evidence, as it has been

proved on record that property at the hands of Avtar Singh was ancestral property and, therefore, the plaintiffs being minor children of Gurmit Singh who pre-deceased to Avtar Singh has a interest in the property by birth. He further submits vide sale deed dated 10.03.2005, defendant No.1-Avtar Singh had transferred the land measuring 47 Kanal 13 Marla in favour of defendant Nos.2 and 3, who are none else but sons of Avtar Singh. It has been mentioned in the sale deed that rest of the share i.e. 16 Kanal 2 Marla has been kept by him for the benefit of the plaintiffs.

Ms. Maninder Kaur, Advocate for the respondent Nos.1 and 3, in support of contentions submits that both the Courts below have rendered a finding of fact and law which is based on appreciation of oral and documentary evidence. There is no illegality and perversity, much less, no substantial question of law arises for the adjudication of aforementioned appeal.

I have heard learned counsel for the parties and appraised the impugned judgment and decree.

I am of the view that the appeal is liable to be dismissed for the reasons that the appellant-plaintiffs have miserably failed to prove that property at the hands of Avtar Singh was ancestral property, whereas on the contrary it has been proved on record that property at the hands of Avtar Singh was self-acquired property. The suit has been filed during the lifetime of Avtar Singh and, therefore, the appellant being the children of Gurmit Singh s/o Avtar Singh who is pre-deceased to Avtar Singh cannot have a right to claim the share in the property during the lifetime of Avtar Singh.

The self-acquired property can be held or disposed in any manner in which

the owner wants to do in his wisdom. The clause in sale deed dated 10.03.2005 do not create any right in favour of plaintiffs to assert their claim on the said piece of land, i.e. 16 Kanal 2 Marla. The appellant-plaintiffs have miserably failed to prove on record through oral and documentary evidence that the property at the hands of Avtar Singh was ancestral because term ancestral envisage the property much devolve from three descendents.

Both the Courts below have held rendered a finding of fact and law, based on appreciation of oral and documentary evidence.

There is no illegality and perversity in the findings recorded by the Courts below which are based on the facts and law.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, the present appeal is dismissed.

18.02.2015

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**(AMIT RAWAL)
JUDGE**