

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

**RSA No.419 of 2011 (O&M)
Date of decision: 11.08.2015**

Ishika and another

... Appellants

Vs.

Rohtash

... Respondent

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. N.S.Panwar, Advocate
for the appellants.

Mr. Vikas Lochab, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

Challenge in the present appeal is to the judgments and decrees of both the Courts below, whereby, petition under Section 19 of Hindu Adoption and Maintenance Act, 1955 (hereinafter referred to as 'the Act') filed by the appellants being grand children of respondent-defendant, namely, Rohtash son of Shri Niadar Singh has been dismissed on the ground that appellant-plaintiffs have not been able to prove that the property at the hands of Rohtash was ancestral which was requirement of law, as per Section 19 of the Act.

Mr. N.S.Panwar, learned counsel appearing on behalf of the appellants submits that as per documents Ex.PW4/A to PW4/C,

property at the hands of Rohtash was ancestral. He further submits that the respondent-defendant in cross-examination admitted that the property at the hands of Rohtash was ancestral, therefore, both the Courts below have committed illegality and perversity, thus, the appeal involves the substantial questions of law and aforementioned judgments and decrees are liable to be set aside. In support of his submission, he relied upon the judgment of this Court in *Gurdip Kaur vs. Ghamand Singh* **1965 AIR (Punjab) 238**.

Mr. Vikas Lochab, learned counsel appearing on behalf of the respondent submits that property at the hands of respondent-defendant had been acquired by the Government in the year 2008, i.e., during the pendency of the matter before the trial Court.

It is now well settled law that admission in cross examination would not change the nature and character of the property as alleged to be ancestral until and unless excerpt is proved/placed on record.

I am afraid the documents, Annexures A1 and A2 do not prima facie show that property at the hands of Niadar Singh was ancestral property because the property at the hands of Niadar Singh, as per para 223 of the Principles of Hindu Law by DF Mulla is not proved to have fallen in the hands of father of the appellants, i.e., from three generations.

There is no dispute with regard to the aforementioned judgment rendered by the Full Bench of this Court in *Gurdip Kaur's*

case (supra), with regard to explanation of terminology 'coparcenary property' vis-a-vis 'ancestral property'. The Hon'ble Full Bench while taking into consideration para 223 of the Principles of Hindu Law by DF Mulla laid down that conditions envisaged in Section 19(2) of the Act, are required to be fulfilled for claiming maintenance.

The facts of this case are entirely different from the aforementioned judgment. In the cited case, it was widowed daughter-in-law, who, claimed share from father-in-law on the premise that her husband had share and the observations arrived at on the basis of documentary evidence. However, in the present case, no documentary evidence had been led nor there is any pleading that the property came to the hands of their father from three generations but the claim was that the property at the hands of the father was ancestral.

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

No substantial question of law arises for consideration of this Court.

There is no merit in the appeal.

Accordingly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 11, 2015
savita