

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

**Regular Second Appeal No.1600 of 2012 (O&M)
Date of Decision: February 06, 2015.**

Sabaddi

.....APPELLANT(s).

VERSUS

Issar and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. J.S. Hooda, Advocate
for the appellant (s).

SURINDER GUPTA, J.

CM-12762-C-2014

Application is for placing on record better affidavit in support of application seeking condonation of delay in re-filing the appeal.

The same is taken on record subject to all just exceptions.

Application stands disposed of.

CM-4351-C-2012

There is delay of 32 days in re-filing the appeal.

Heard.

In view of facts mentioned in the application, the same is allowed and delay of 32 days in re-filing the appeal is, hereby, condoned.

CM-4352-C-2012

Application is allowed subject to all just exceptions.

RSA-1600-2012

This regular second appeal has been filed against the concurrent finding of Courts below whereby the suit of the appellant-plaintiff seeking

the relief as follows, was dismissed:-

“Claim for a decree of declaration to the effect that the release deed bearing document Sr. No. dated 25.02.2005 executed by defendant No.2 in favour of defendant No.1 in respect of the land detailed in para No.1 of the plaint is without legal necessity and consideration and in contravention of the agricultural custom of the parties and therefore, the same is illegal, null, void, nonest and does not effect the legal rights of the plaintiff and defendant No.3 to succeed the same on the death of the defendant No.1 and a decree for permanent injunction restraining defendant No.1 from alienating or transferring the disputed land detailed in para No.1 of the plaint in any manner may kindly be passed in favour of the plaintiff and against defendants No.1 and 2 with costs of the suit.”

The thrust of the appellant, while challenging the release deed pertaining the land measuring 10 kanals 10 marlas executed by his father, was on the point that the suit land was ancestral property of the plaintiff, defendant No.3 in the hands of defendant No.2, as such, he was not competent to alienate/transfer this property without legal necessity, consideration and consent of all the members of the joint Hindu family.

Respondent-defendant No.1 contested and controverted the claim of appellant-plaintiff.

Additional Civil Judge (Senior Division), Punhana, District Mewat dismissed the suit and the appeal filed by the appellant was dismissed by Additional District Judge, Nuh. Both the Courts held that the appellant had failed to prove that the suit land was ancestral property in the hands of his father Sadru, respondent-defendant No.2. Rather, it was his self-acquired property. The above observations were recorded by the Courts below as the appellant-plaintiff failed to produce any evidence to prove the ancestral nature of the suit property.

Learned counsel for the appellant-plaintiff has argued that both the Courts below have gone wrong while recording finding regarding the nature of the suit property. In the release deed itself executed by Sadru, it was specifically mentioned that the suit property was ancestral property of the parties. In view of the admission made in the release deed, there was no need to produce any other evidence that the property alienated through release deed dated 25.02.2005 was ancestral property. He further argues that some property was inherited by Sadru and his other brothers from their father before consolidation. The Courts below have declined to accept the suit property as ancestral property on the ground that the appellant-plaintiff failed to connect this property with the property inherited by Sadru from his ancestors.

On giving a careful thought to the submissions made by learned counsel for the appellant and going through the paper-book and the judgments of the Courts below, I find that the Courts below have committed no error of law or fact while reaching the conclusion that the suit property was not proved to be the ancestral property in which the appellant had any share. After evaluating the evidence on record, learned Additional Civil Judge (Senior Division), Punhana observed regarding the nature of the suit property as follows:-

“I have given my thoughtful consideration to the rival submissions advanced by both the learned counsel for the parties. It is admitted fact that parties to the suit are *meo* by caste. It is also not in dispute that in District Gurgaon/ Mewat, the *meos* are governed by customs in matters of succession and alienation of immovable property. Under the custom, an ancestral immoveable property is ordinarily inalienable except for the necessity or with the consent of male descendants. In this backdrop, first of all it is to be

decided as to whether or not land in dispute is ancestral land? In *1971 Cur. L.J. 702 Mst. Sham Kaur Vs. Hari Singh etc.(Supra)*, it has been held by Hon'ble High Court that party asserting the land to be ancestral, has to show (a) that it was owned by the common ancestor; and (b) that it had descended to the party or parties concerned by inheritance and in no other manner. It has been further held that both these elements are positive and if either of them is missing the land cannot be said to be ancestral. Both of them must be cogently established and the law does not accept mere conjectures, surmises or assumptions as a substitute for proof. It has also been held that all the properties is presumed to be non-ancestral and onus to prove that it is ancestral, lies on the persona asserting it to be so. Thus, the onus to prove the nature of the land in question lies heavily on the plaintiff. Plaintiff produced oral as well as documentary evidence to prove the nature of the land. Perusal of oral testimony of witnesses examined by the plaintiff shows that they deposed that land in dispute is ancestral land but oral testimony is not sufficient to prove nature of the land in dispute. Now coming to the documentary evidence produced by plaintiff, he produced jamabandi for the year 1995-96 Ex-P2 and mutation No.1642 sanctioned on 3.7.1944. Perusal of jamabandi Ex-P2 shows that defendant No.2 Sadru is co-owner of the suit land. Ex-P3 is a mutation of inheritance of Foj Khan and sanctioned in favour of Rehmat, Sadru, Fajru. It show that defendant No.2 Sadru and his brother Rehmat and Fajru inherited 11-14-0 from their father Foj Khan. But plaintiff has not produced any other revenue record to connect the inherited land vide mutation Ex-P3 with the land in dispute shown in jamabandi for the year 1995-96. It is admitted fact that consolidation of land holdings also took place around 1960 and numbers of land were changed. In given circumstances, it cannot be said that land in dispute was inherited by defendant No.2 from

his father or fore-father in absence of documentary evidence. Even an admission of the party may not be enough to hold that property to be ancestral or coparcenary as to prove nature of the property, the Court does not only by evidence that may come on records of case. In this regard reference may be made to **2004 (3) LJR 818 Matu Ram Vs. Kartar Singh & Ors., (supra).**”

The first Appellate Court has also observed that except for the jamabandi for the year 1995-96 Ex.P2, no revenue record was produced by the appellant-plaintiff to prove ancestral nature of the property. Sadru was held to be exclusive owner of the suit property. It was observed that appellant-plaintiff has no share in the suit property, as such, was incompetent to challenge the release deed.

It is well settled proposition of law that the admission of a party is not enough to hold the nature of property as ancestral or joint Hindu family coparcenary property. This fact is required to be proved by producing evidence on record. In the absence of any documentary evidence on record, both the Courts below have rightly observed that the appellant-plaintiff had failed in his plea to prove the nature of property as ancestral property.

Learned counsel for the appellant-plaintiff has not been able to point out any factual or legal error in the observations made by the Courts below.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

February 06, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE