

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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RSA No. 4780 of 2011 (O&M)

Date of Decision: 10.12.2015

Surja

.....APPELLANT

VERSUS

Ram Kumar and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**PRESENT: Mr. Amit Kumar Jain, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division) Jind dated 17.02.2009, by which the suit filed by the appellant-plaintiff for declaration to the effect that he is owner of 1/15th share out of 1/3rd share of his deceased father Risala in agricultural land comprised in Khewat No. 180 Khatoni No. 334, total measuring 256 Kanals 2 Marlas situated in the revenue estate of Village Pegan, Tehsil and District Jind and that the decree dated 26.05.1994 passed by the Senior Sub-Judge, Jind in Civil Suit No. 367 dated 20.05.1994 and mutation No. 2235 dated 26.07.1994 are illegal, null and void and not binding upon the rights of the appellant-plaintiff stands dismissed, appeal against which has also been dismissed by the learned Additional District Judge, Jind on 06.09.2011.

2. It is the contention of the learned counsel for the appellant that the impugned judgment and decree, on the basis of which the respondents became the owners of the property, is not sustainable in the light of the fact that the property, which has been transferred in favour of the respondents by his father Risala son of Lal Chand, was an ancestral property and the same could not have been, therefore, transferred by excluding the claim of the appellant. He contends that he has not been impleaded as a party to the said suit and, therefore, the judgment and decree would not be binding on him. He, on this basis, contends that the judgments and decree passed by the Courts below deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments.

4. As far as the claim of the appellant-plaintiff that the ancestral property could not have been transferred in the name of defendants by his father depriving him of his share would have been acceptable, had it been an ancestral property, which was transferred. A perusal of the judgment would show that the appellant-plaintiff has only produced one mutation No. 989 Ex. PW1/B on the record, which shows Risala, father of the appellant, inheriting land along with his brothers from their father Lal Chand. For the property to be termed as an ancestral property, inheritance through three descendants has to be established, which the appellant-plaintiff has failed to do so. The finding, thus, of the Courts below that the property in question is not an ancestral property cannot be said to be not in accordance with law or not based upon proper appreciation of the pleadings and the evidence brought on record.

5. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

December 10, 2015

pj