

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.3103 of 2012

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Date of decision:20.7.2015

Gurcharan Singh alias Balwinder Singh

.....Appellant

v.

Gurtej Singh and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Anoop Singla, Advocate for Mr. Rajesh Kumar Girdhar,
Advocate for the appellant.

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Inderjit Singh, J.

This regular second appeal has been filed by Gurcharan Singh alias Balwinder Singh-appellant/plaintiff against Gurtej Singh and others -respondents/defendants challenging the impugned judgment and decree dated 10.4.2012 passed by the learned District Judge, Sirsa, vide which the appeal filed by the plaintiffs against the impugned judgment and decree dated 9.9.2010 passed by learned Civil Judge (Senior Division), Sirsa, dismissing the suit of the plaintiffs, has been dismissed.

The brief facts of the case are that Surjeet Kaur and Gurcharan Singh alias Balwinder Singh-plaintiffs filed suit for declaration that they are owners in possession in equal share of land i.e. 243/1291 share out of total land measuring 64 Kanals 11 Marlas as fully described in the head note of

the plaint. The main case of the plaintiffs is that Darshan Singh father of Gurcharan Singh-plaintiff engaged two marriages in his life. Plaintiff No.1 Surjeet Kaur was his first wife. From this wedlock, plaintiff No.2 born. Without taking any divorce from his first wife, Darshan Singh engaged second marriage. Out of this marriage, defendant No.5-Maghar Singh was born, who being illegal, has nothing to do with the suit land because the same is ancestral and coparcenary property. It is also the case of the plaintiffs that regarding the same land the impugned judgment and decree dated 19.11.2005 was passed by learned Additional Civil Judge (Senior Division), Sirsa in Civil Suit No.391-C of 2005, titled as Sadhu Singh and others Vs. Gurtej Singh” and subsequently mutation and other revenue record Jamabandi and Khasra Girdawris, if any, entered on the basis of the same judgment and decree were wrong, illegal, against law, facts, null and void. The plaintiffs were not party in aforesaid suit. It is further stated that the suit land is ancestral property and the same is still joint and has not been partitioned till today between the parties. It is also the case of the plaintiffs that the property is in the name of Gurtej Singh father of Darshan Singh.

On notice, the defendants filed joint written statement taking the preliminary objection regarding cause of action etc. The fact regarding ancestral property is denied. It is stated that plaintiff No.1 had been married to Darshan Singh and plaintiff No.2 was born out of this wedlock. It is submitted that matrimonial litigation under Hindu Law was initiated between plaintiff No.1 and Darshan Singh. As per order dated 30.11.1979 passed by the learned Additional District Judge, Sirsa, plaintiff No.1 was

held entitled to get maintenance @₹125/- for herself and minor son till her remarriage from 21.8.1979. Thereafter, Darshan Singh had remarried with Kamaljit Kaur and out of this wedlock, defendant No.5 was born. The illegal status of second marriage was denied as well as a plea was taken that the plaintiffs have nothing to do with the suit land or any part thereof. It is also stated that the judgment and decree under challenge in this suit are legal and valid. It is also stated that it was self-acquired property of defendant No.1 and the plaintiffs have nothing to do with the suit land or any part thereof in any capacity.

After framing of the issues and the parties led their evidence, the learned Civil Judge (Senior Division), Sirsa, dismissed the suit of the plaintiffs. The plaintiffs filed an appeal before the learned District Judge, Sirsa and the same was also dismissed vide judgment and decree dated 10.4.2012. Aggrieved against both the impugned judgments and decrees, the present regular second appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that the findings given by the Courts below are against the evidence and perverse and these are liable to be set aside.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that the main point for determination in this appeal is whether the suit property is ancestral coparcenary property of the plaintiffs or self-acquired property of defendant No.1 i.e. grand-father of plaintiff No.2 and father-in-law of plaintiff No.1. At the time of arguments,

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learned counsel for the appellant was asked to show as to what evidence he had led to prove the ancestral nature of the property. Learned counsel for the appellant fairly admitted that he had not produced revenue record to prove the property as ancestral property. As the plaintiffs had not produced the revenue record and cogent evidence to show that defendant No.1 had inherited this property from his father, who in turn had inherited the same from his father and as there is no cogent evidence on record to prove ancestral nature of property, therefore, the findings given by the Courts below are correct and as per law and evidence on record. If the property is not ancestral property and the suit has been filed against the owner-defendant No.1, who is grand-father of plaintiff No.2 and father-in-law of plaintiff No.1, then the plaintiffs have no right in the suit property. If the property is separate property as held by the Courts below, then the plaintiffs have also no right to challenge the judgment and decree passed by the learned Additional Civil Judge (Senior Division), Sirsa on 19.11.2005. Otherwise also, the decree can be challenged only within three years.

Therefore, from the above discussion, I find that the findings given by the Courts below are concurrent as per evidence and law, which do not require any interference from this Court and the same are upheld. No substantial question of laws arises in this regular second appeal.

Consequently, finding no merit in the regular second appeal, the same is dismissed.

July 20, 2015.

(Inderjit Singh)
Judge

hsp