

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

**RSA No. 1146 of 2015(O&M)
Date of decision: 20.11.2015**

Gurmeet Singh and others

.....Appellants

versus

Amarjeet Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice K.Kannan

Present: Mr. Naresh Kaushal, Advocate
for the appellants.

K.Kannan, J.(Oral)

The suit by the plaintiffs for 1/4th share each was resisted by the children by the pre-deceased son Nirmal, who was incidentally the brother of the plaintiffs. The property was held by the father of Bant Singh who died on 16.07.2002. It was plaintiffs contention that the property was held by Bant Singh's father Maghi and on his death on 21.05.1983, the property was mutated in the name of the father and his brothers. Since the property was obtained by the father Bant Singh from his father, the property must be taken coparcenary property. Apart of character of ancestral co-parcenary, the defendants were making out a case as though there was a Will executed by the father on 12.07.2005 in their favour. The contention was that after the death of his son Nirmal Singh, the father Bant Singh took sympathies on the son's widow and the children and they had allowed them to live with him. The mother of the minor children had played a fraud and had attempted to take the entire bequest in favour of her sons. The father was not competent to execute a Will in respect of ancestral property including the plaintiffs interest in

the property. The Will was brought out by undue influence.

The court found that there was no proof of the property shown in the revenue records correlated to the properties in suit and however, they were found to be not ancestral. The court also held that the scribe who was an advocate and witnesses examined had substantiated the execution and attestation as valid. The disposition of the father Bant Singh was natural, having admittedly brought up the defendants and their own mother was living in the same house with Bant Singh looking after him till his death. The Will was also found to be true and the plaintiffs suit was dismissed.

The appellate court also confirmed the same. Learned counsel would try to make a reliance on an application filed along with the appeal for reception of additional evidence in an attempt to bring correlation of what was lacking at the trial. I had allowed the counsel the benefit of such a reference but if were all to be contended that property belonging to Maghi originally and had died after coming into force of Hindu Succession Act, the property inherited by the sons will parttake the character of separate property only in terms of the law laid down by the Supreme Court in **V.Chander Sen vs. Commissioner Wealth Tax (AIR 1986)P 1753** and **Yudhister vs. Ashok Kumar AIR 1987 SC 558**. Unless the father had himself impressed the property inherited from his father with the character of joint family property and allowed the sons to enjoy the same jointly with him by alteration of the character of separate properties to that of joint family, the property held by the father cannot be treated as ancestral property. If Bant Singh had held

the property as his own in the manner in which he declared even in the Will, then the only question would be whether the will was proved, the burden of which was on the defendant. The courts below considered their evidence and found the disposition to be natural. The dismissal of the suit was under the circumstances an inevitable consequence, there is no scope for intervention.

I must also state before concluding that the claim for 1/5th share each on the basis that it was ancestral property was itself untenable. If the death of the father took place in the year 2002, plaintiffs No. 2 to 4 being daughters did not have any right by birth in respect of ancestral property. The law, underwent a change only in the year 2005 and if succession had opened before the Amendment Act, 2005, the property could be inherited by them only if it was left undisposed of. If father disposed of the property by Will, the only person who could have laid a challenge is Ist plaintiff, who could be. I am setting this out only for the sake of completion of narration of facts and this reference ought not to be understood as either an upsetting of finding already rendered that there was no ancestral property nor would this make possible a claim for the Ist appellant to be pursued in any other proceeding. The dismissal the suit by the two courts below would therefore, require to be supported and the second appeal is dismissed.

20th November, 2015
Shivani Kaushik

[K.KANNAN]
Judge