

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

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Regular Second Appeal No.2048 of 2015
Date of Decision: October 14, 2015

Sumer Chand and others

...Appellants

Versus

Kulbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. K.B. Raheja, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Yamuna Nagar at Jagadhri, dated 11.11.2011, by which suit for declaration to the effect that the Will dated 25.06.1999, release deeds dated 17.01.2001 and 18.12.2001 allegedly executed by Nathu Ram, predecessor-in-interest of the parties in favour of Kulbir Singh and Surender Kumar, respondents-defendants 1 and 2 and subsequent mutations entered in the revenue record, are wrong, illegal, null and void and the appellants-plaintiffs are legally entitled for inheritance of movable and immovable property left behind by Nathu Ram along with compensation of the land acquired by the Improvement Trust, Yamuna Nagar, along with consequential relief of permanent injunction restraining the respondents-defendants from alienating the suit property, stands dismissed, appeal against which preferred by the appellants-plaintiffs also stands dismissed by Additional District Judge, Yamuna Nagar at Jagadhri, on 06.01.2015.

2. It is the contention of learned counsel for the appellants-defendants that the Courts below have not properly appreciated the pleadings and evidence of the parties and have, therefore, returned findings, which cannot be sustained. He asserts that there is perversity in the decision due to misappreciation of evidence and, thus, this Court in exercise of its powers under Section 100 of CPC can entertain the present appeal as this would be a substantial question of law. He places reliance upon the judgments of the Supreme Court passed in the case of ***Major Singh Versus Rattan Singh (dead) by L.Rs. 1997(3) SCC 546 and Easwari Versus Parvathi and others 2014 AIR (SCW) 4406***. His contention is that the relationship between the parties is not in dispute nor is the pedigree table. He submits that the property being ancestral, there could have been no Will of the same and thus, the respondents-defendants could not have inherited the same as per Will. He further contends that the Will also is shrouded by suspicious circumstances, specially when Nathu Ram was not keeping good health and was not mentally fit to execute the Will as also the release deeds. Further, in the Will no reason for denying the other sons and daughters of their share in the property has been given and in the release deeds, it has been mentioned that these properties are ancestral, which is an admission on the part of respondents-defendants 1 and 2. His further contention is that the learned Lower Appellate Court has wrongly dismissed the application moved under Order XLI Rule 27 CPC for leading additional evidence, which were essential documents to enable the Court to pronounce its judgment. He places reliance upon the judgment of this Court passed in case titled as ***Ram Gopal and others Versus Hira and others 1986 R.R.R. 633***

to contend that the additional evidence at the appellate stage can be allowed when there is some lacuna or obscurity in the evidence. Reliance has also been placed on the judgment passed in case titled as ***Rajesh Kumar Versus Mangat Rai and others 2012(2) PLR 334***. He accordingly contends that the appeal be allowed and the judgments and decree passed by the Courts below be set aside and the suit decreed.

3. On considering the submissions made by the counsel for the appellants-plaintiffs and going through the impugned judgments, this Court is of the opinion that the appeal has no merit as none of the contentions pressed into service by the counsel, carry any weight.

4. There can be no dispute that additional evidence can be permitted to be led at any stage of the case including the appeal but it cannot be at the whims and fancies or the wish and desire of the party concerned. The parameters, which have been laid down under Order XLI Rule 27 CPC are the guiding principles, one of which is that the additional evidence should not be permitted at the appellate stage in order to enable one of the parties to remove certain lacunae in presenting its case at the proper stage and to fill in the gaps. The Court has to see in the facts and circumstances of the case and the reasons given for not producing such evidence at the relevant time. The guiding principle while permitting additional evidence is to enable the Court to pronounce judgment which would include any other substantial cause as well but that would be dependent upon the reasons pleaded and the intention of the party. In the present case, the learned Lower Appellate Court has properly appreciated the facts and circumstances and the settled principles of law while rejecting

the application for leading additional evidence. The reasons assigned for the same are given in para 14 of the judgment, which cannot be faulted with.

The same reads as follows:-

“14. Court has considered the submissions. There is no dispute with the settled proposition of law that in case Court requires any document to enable it to pronounce the judgment or for any other substantial cause, the same can be allowed to be adduced as additional evidence under Order 41 Rule 27 CPC. However, in the present case, admittedly, the appellants-plaintiffs knew about their case from the very beginning and it was for them to prove their case by producing relevant revenue record or by leading cogent and substantive evidence which they failed to produce despite of having availed sufficient opportunities during the trial of the case and now, by way of additional evidence, they cannot be allowed to fill up the lacuna in their case. Moreover, allowing the application for leading additional evidence by calling witnesses such as Doctor concerned who treated Nathu Ram (since deceased), Ram Saran and Balwant Singh shall amount to denovo trial. No justification or sufficient reason has been assigned as to why the evidence mentioned in the application could not be adduced at the relevant stage of the trial. The alleged revenue record has been in the knowledge of the plaintiffs-applicants. The appellants-applicants-plaintiffs have failed to make out the ground to allow the application for leading additional evidence at this stage. Even otherwise the revenue record, sought to be produced in additional evidence, does not go on to prove substantially that the property in question is virtually ancestral one or the same was purchased out of the sale proceeds of the ancestral land”.

5. The basic question, on which the case hinges, is the fact as to whether Nathu Ram's property was ancestral or self-acquired. Since the appellants-plaintiffs have sought a declaration, on the basis of which the

Will and the release deeds were sought to be annulled, the onus was upon them to prove their contentions, as has been pleaded by them. Except for the bald statement, nothing has come on record which would cast suspicion on the Will dated 25.06.1999 executed by Nathu Ram, while on the other hand, respondents-defendants 1 and 2 have produced cogent evidence to prove the execution of the said Will. It may be added here that the Will in question is a registered Will. It may not be out of way to mention here that the signatures appended by Nathu Ram in Urdu and his thumb impression have not been disputed by the appellants-plaintiffs. They have only disputed the factum with regard to the mental fitness of Nathu Ram to execute the Will and the release deeds. Respondents-defendants have produced medical certificate Exhibit D-14, which was obtained after execution of the Will with regard to his mental fitness to execute the same, which is dated 15.09.1999, whereas the Will is dated 25.06.1999.

6. An argument has been raised by the counsel for the appellants-plaintiffs that no reasons have been assigned in the Will for denying any share in the property to the other sons and daughters. This contention of learned counsel for the appellants-plaintiffs cannot be accepted as in the Will Exhibit D-2, Nathu Ram has said that he has already got purchased land in favour of his sons Brij Mohan, Satpal and Prithi Singh. This demolishes the argument of the counsel.

7. As regards the contention of learned counsel for the appellants-plaintiffs that the property is ancestral, specially when the release deeds state the same to be ancestral, the said contention cannot be accepted as the onus to prove that the property in dispute was ancestral, was upon the

appellants-plaintiffs, who have failed to discharge the same nor have they been able to prove that the land in dispute even if self-acquired, as has been asserted by the respondents-defendants, who have relied upon the sale deed dated 24.02.1958 Exhibit D-13, was purchased out of the joint funds or the proceeds of the ancestral property. This Court in ***Matu Ram Versus Kartar Singh 2004 (2) PLR 569*** has held that admission of a party may not be enough to hold the property to be ancestral or coparcenary and the Court goes by the evidence that may come on record of the case. Present is not a case where there is admission with regard to the property being ancestral rather it has been asserted that the same is self-acquired as reliance has been placed upon the sale deed dated 24.02.1958 Exhibit D-13. This Court in ***Harpal Singh Versus Jiwan Kumar 2013 (1) Civil Court Cases 459*** has held that unless and until it is proved by cogent evidence that the property is having ancestral character, it is presumed that the property is self-acquired.

8. The findings, thus, recorded by the Courts below that the appellants-plaintiffs have failed to prove that the land is ancestral, cannot be faulted with as there is no evidence to prove that the property in dispute to be so.

9. There is yet another ground on the basis of which the Courts below have rightly held the suit to be not legally maintainable as the appellants-plaintiffs have filed a suit for declaration and injunction without claiming possession of the same. In the cross-examination, the plaintiffs admitted that respondents-defendants 1 and 2 are in possession of the property.

10. In view of the above, the contentions as raised by the counsel

for the appellants-plaintiffs cannot be accepted. Further there are concurrent findings recorded by the Courts below and the same cannot be interfered with as there is no perversity or illegality in the same. Moreover, no substantial question of law is involved in the present appeal.

11. Finding no merit in the present appeal, the same stands dismissed.

October 14, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE