

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2130 of 2015 (O&M)
Date of Decision.04.09.2015

Karnail Singh

.....Appellant

Versus

Gurchain Singh (since deceased) through LR's and others.....Respondents

Present: Mr. M.S. Kang, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.

1. The plaintiff is the appellant before this Court. The plaintiff has filed the suit for joint possession of 2/15th share in the lands described in the plaint. The suit averments are to the effect that the properties belonged to the plaintiff and the family of defendants as ancestral property in which the plaintiff has 2/15th share. The defendants denied the character of property as ancestral but it would appear that after the 1st defendant's death, his wife had been impleaded as a party and her son-in-law was appointed as a power of attorney. Power of Attorney Mohan Singh had admitted to the character of properties as belonging to the family ancestrally and at the trial, it was sought to be argued that the character of properties as ancestral properties having been an admitted fact, the plaintiff was entitled to decree as prayed for.

2. The matter simply does not begin and end by a reference to admission and it becomes essential to examine the source of title and the

manner in which the plaintiff was making a claim to the property. It would also become essential to set out the relationship between the contesting parties. The plaintiff is the son of one Pritam Singh. Pritam Singh had three brothers; (i) Jagga Singh, (ii) Joginder Singh and (iii) Gurchain Singh who was the 1st defendant in suit. Jagga Singh was reported to have died long time back unmarried, issueless obviously. Pritam Singh had the plaintiff and three other sons and daughters to survive him. He is reported to have died about 29 years prior to the institution of the suit. Joginder Singh died unmarried and Gurchain Singh is yet another brother. The suit was on a plea that the properties stood in the name of Joginder Singh and after Joginder Singh's death, the property has survived to Gurchain Singh, the 1st defendant and the plaintiff and his brothers. Since the character of property was admitted to be ancestral, the plaintiff would contend that he was entitled to share in the property.

3. It must be noticed that if the family remained joint without any division, there was simply no scope for the property to be standing in the name of Joginder Singh. It is the contention of the plaintiff himself that Pritam Singh left behind properties of which he is in possession of. If the suit property stood mutated in the name of Joginder Singh, I would understand each one of the brothers had their own share demarcated and they were in enjoyment of the same. If Joginder Singh had, therefore, died without marriage as a bachelor, I would only look to find who was the nearest heir to him. The brother Gurchain Singh was the nearest, for, the brother's son would stand excluded by the brother himself. The admission of the 1st defendant as

ancestral must be understood that source of title to Joginder Singh was ancestral in character and there is nothing to show that the particular property which Joginder Singh died possessed of was actually held in common along with the plaintiff or the defendants. The fact that the revenue entries stood exclusively in the name of Joginder Singh is a pointer to the fact that the properties were only the properties held by Joginder Singh independently and on his death, the plaintiff cannot claim any right to the property when his brother, 1st defendant was alive. There is absolute lack of clarity about how the plaintiff was filing a suit without impleading all other brothers and sisters who would be entitled to a share in the property if they were all held jointly. Again if the plaintiff was seeking for joint possession, it cannot be merely a property which stood in the name of Joginder Singh that could have been referred to in the plaint, the whole of the family properties that comprised of the four brothers must have been brought into the hotchpot in suit and the plaintiff could ask for a joint possession. A selective description of the property held only in the name of Joginder Singh in the revenue records and seeking for joint possession was simply incompetent.

4. The suit in the manner in which it has been framed and the relief that has been sought with inadequate and vague recitals could not have been sustained at all and rightly dismissed. I do not find any substantial question of law for consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

September 04, 2015

Pankaj*