

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2937 of 2015 (O&M)

Date of Decision: September 29, 2015

Malkiat Singh

...Appellant

Versus

Dayal Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.B.D.Sharma, Advocate,
for the appellant.

AMIT RAWAL, J.

CM No.7096-C of 2015

For the reasons mentioned in the application, which is supported by an affidavit, delay of 252 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.2937 of 2015 (O&M)

The appellant-plaintiff has impugned the judgments and decrees of both the Courts below, whereby the suit filed at his instance for declaration to the effect that the gift deeds No.9001 and 9002 dated 14.3.2003 registered with Sub Registrar, Jalandhar being result of fraud,

misrepresentation, illegal and void and without any legal necessity were not binding upon the plaintiff in respect of the suit property, with a consequential relief of permanent injunction, has been dismissed.

Mr.B.D.Sharma, learned counsel appearing on behalf of the appellant-plaintiff submits that the suit property originally belonged to Harnam Singh and after his death, his son Banta Singh became the owner. On account of death of Banta Singh, Dayal Singh and Budh Singh became the owners of the property. The suit property was ancestral and plaintiff and defendant Nos.1,2, 4 to 11 were coparceners. Dayal Singh, father of the plaintiff and Budh Singh, his uncle, illegally and without any necessity gifted away the property in question in favour of Sukhwinder Kaur widow of Parkash Singh and Bahadur Singh, by way of aforementioned gift deeds. Since the property was ancestral, therefore, the appellant-plaintiff had a right by birth. In support of the aforementioned submissions, he submits that jamabandies Ex.P2 to Ex.P7 were brought on record to show that Banta Singh son of Harnam Singh was recorded as owner of the property and, therefore, the property in the hands of Dayal Singh and Budh Singh was ancestral and, thus, they could have parted away with the title and interest in the property by way of gift deed. In support of his submission, he has relied upon the judgment rendered by the Hon'ble Supreme Court in **Smt.Dipo Versus Wassan Singh and others**, AIR 1983 (SC) 846 to contend that when there is no surviving member in joint family, preference should be given to the collaterals over sister. He further submits that in the written statement, respondent-defendant Nos.1 to 4 did not deny the status and nature of the property as self-acquired. In support of his contention, he has

drawn the attention of the Court to preliminary objection No.1, which reads thus:-

“1. That the plaintiff has not come to this Hon'ble Court with clean hands and have suppressed the material facts. The reality is that the property in question is not ancestral property. Rather it was/is earned property in the hands of defendants No.1 & 2. The documents placed on record by the plaintiff at the time of filing the suit even proves the averments of defendants that the property in question is earned/self-acquired property in the hands of defendants No.1 & 2. It is specially because even the property is situated in Village Kanuni, and Parasrampur, shown in the revenue record was partitioned orally by the defendants No.1 & 2, since about 15 years and since then both the defendants No.1 & 2 are cultivating their shares after the oral partition even that agriculture land.”

He further submits that both the Courts below have not noticed the revenue record, much less, per pleadings of the parties to the lis and dismissed the suit and as well as the appeal.

I have heard the learned counsel for the appellant and appraised the paper book.

It is settled law that the plaintiff has to stand on his own legs. The appellant-plaintiff has failed to prove or summon the excerpt of the suit property, much less, the revenue official or Patwari to prove the jamabandies Ex.P2 to Ex.P7. The said jamabandies have been only tendered. The revenue record, i.e., excerpt, *Aks-shajra*, *Khatauni Istemal* and *Khatauni Pamaish*, much less, pedigree table were required to be proved. Once the aforementioned documents have not been proved, in my

view, the findings arrived at by both the Courts below do not suffer from any illegality and perversity. The jamabandies, noticed above, show the suit property at the hands of Banta Singh, whereas the plaintiff is the son of Dayal Singh and Dayal Singh is son of Banta Singh, therefore, the property is devolved upon Dayal Singh from three generations so that the appellant-plaintiff, being the fourth generation, had claimed the right by birth. The nature and character of the property being ancestral even all times cannot be changed. In essence, it would remain ancestral property. The respondent-defendants categorically admitted in the written statement that the property was self-acquired, thus, the onus heavily relied upon the appellant-plaintiff to prove that the nature and character of the property was ancestral. Having failed to do so, in my view, the gift deeds, as sought to be challenged, could not have been forged as the plaintiff failed to prove the nature of the property being ancestral.

In view of what has been observed above, no substantial question of law arises for determination by this Court. The appeal is devoid of merits and accordingly the same is dismissed.

September 29, 2015
ramesh

(AMIT RAWAL)
JUDGE