

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

**RSA No.1120 of 2014 (O&M)
Date of decision: 21.09.2015**

Gurvinder Singh and another

... Appellants

Vs.

Jagir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. G.S.Bhatia, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

Challenge in the present appeal is to the concurrent finding of facts and law, whereby, the suit for declaration and permanent injunction challenging two sale deeds dated 07.01.2004 executed by defendant No.2, Swaran Singh, who is none else, but father of the plaintiffs, has been dismissed.

Mr. G.S.Bhatia, learned counsel appearing on behalf of the appellant/plaintiffs submits that declaration was sought on the ground of nature and character of the suit property at the hands of Swaran Singh was ancestral. He further submits that sale deeds were without consideration, therefore, defendant No.2, could not part with the property without taking into consideration the interest of the

appellant-plaintiffs, except for legal necessity. The document, jamabandi Ex.P1 reveals that Swaran Singh, had got the property from Mohinder Singh/his father, thus, both the Courts below have committed illegality and perversity in dismissing the suit as well as appeal. Therefore, substantial questions of law arise to be determined by this Court.

I have heard learned counsel for the appellants and appraised the impugned judgments and decrees of the Courts below.

The power of attorney dated 20.08.2001 has been duly proved through the testimony of Clerk appeared from the office of Sub Registrar, Morinda. Even Sanjiv Kumar, deed writer has duly been, examined by the defendants, as DW-2, who had deposed and proved power of attorney dated 20.08.2001. The best possible witness, which could have supported the case, is Swaran Singh, who has not stepped into witness box. The plaintiffs did not lead evidence to show that the nature of the property was ancestral at the hands of the Swaran Singh. Para No.223 of the Mulla envisages that in order to claim the nature of the property being ancestral, it has to be proved on record that the property at the hands of the person should devolve from three generations. The contention of Mr. Bhatia, Advocate, that since the parties had not led any evidence, it is a fit case to remand back and relied upon the judgment of the Hon'ble Supreme Court in **M/s Divya Exports vs. M/s Shalimar Video Company and others 2012(1) R.C.R.(Civil) 154**, wherein, the Court

after noticing the facts, formed an opinion that the parties had not led any evidence as there was no issue framed which resulted into decision of the matter. The aforesaid ratio decidendi culled out by the Hon'ble Supreme Court do not apply to the facts and circumstances of the present case. The appellants failed to prove that the property at the hands of Swaran Singh was ancestral and there was specific denial by defendants No.3 and 4 in their written statement. Once there was denial, it was incumbent upon the appellant-plaintiffs to discharge the burden, as per Section 101 of the Indian Evidence Act. Having not discharged the burden, it could not be rebutted by the defendants. The plaintiffs have to stand on their own legs and should not find fault in the weak defence of the defendants.

In view of what has been observed above, I do not find any illegality, much less, perversity in the finding rendered by the Courts below, which are based on appreciation of oral and documentary evidence. No substantial question of law arises to be determined by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 21, 2015
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