

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

**RSA No.2327 of 2014 (O&M)
Date of decision: 16.01.2015**

Dharmender and another ... Appellants

Vs.

Smt. Jaijayanti and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.S.Sihota, Senior Advocate with
Mr. B.R.Rana, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.5616-C of 2014

For the reasons stated in the application, which is duly supported by an affidavit, delay of 19 days in filing the appeal, is condoned.

C.M. stands disposed of.

C.M.No.5617-C of 2014

The application is allowed, subject to all just exceptions.

RSA No.2327 of 2014 (O&M)

Appellants-plaintiffs are in regular second appeal against the impugned judgments and decrees of both the Courts below, whereby, the suit for declaration to the effect that the plaintiff and respondent No.3 are co-parceners in the suit property and the decree dated 17.04.1999 passed in Civil Suit No.928/1998 was illegal, null

and void and was liable to be set aside as the property at the hands of Roshan Lal was ancestral had been dismissed.

The trial Court found that plaintiffs are the son and daughter of Roshan Lal born out of wedlock of Roshan Lal and Dayawati. Since the plaintiffs failed to prove on record by leading direct and cogent evidence that property at the hands of Roshan Lal was ancestral, the suit of the appellants-plaintiffs was dismissed.

The lower Appellate Court dismissed the appeal by holding that the appellants-plaintiffs did not produce on record the desired evidence to show the character and nature of the property being ancestral i.e. it devolved from Mohra to Foju and then from Foju to Roshan.

Learned counsel appearing on behalf of the appellants-plaintiffs submits that both the Courts below have committed illegality much less perversity in dismissing the suit as the property in the hands of Roshan Lal was ancestral because Foju inherited it from Mohra and Roshan from Foju. Thereafter, appellants-plaintiffs being in fourth generation are co-parceners in the property.

The argument of the learned counsel appearing on behalf of the appellants-plaintiffs is devoid of the merit, for the reason that appellants failed to prove on record excerpt to show that property devolved upon Roshan Lal from his great grandfather. In the absence of excerpt which is mandatory requirement of law to prove character and nature of the land as has been held by this Court in **Banta Singh**

and others vs. Phuman Singh son of Jiwand Singh and others

1971 PLR 1042, it cannot be held that property in the hands of father of plaintiffs was ancestral. In the instant case, plaintiffs have miserably failed to produce original excerpt to show that character and nature of the property being ancestral.

I am in agreement with the findings rendered by the Courts below whereby it has been concurrently held that the nature and character of the property was not ancestral.

No fault can be found with the findings rendered by the Courts below much less there is no illegality and perversity.

No substantial question of law arises for adjudication of this appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 16, 2015
savita