

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

R.S.A.No.645 of 2015 (O&M)

Date of Decision: November 6th, 2015

Ramesh Chand (deceased) through L.Rs

...Appellant

Versus

Umesh Kumar & 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.R.S.Sihota, Senior Advocate with
Mr.Ashok K. Sharma, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

The challenge in the present Regular Second Appeal is to the concurrent findings of facts and law, whereby the appellant-plaintiff has lost in both the Courts below claiming that he has become owner of the property by way of natural succession and the Will dated 16.7.1999 executed by deceased Gobind Lal be declined, are illegal, null and void as it was not executed in his mental and conscious state.

Mr.R.S.Sihota, learned Senior Counsel assisted by Mr.Ashok K. Sharma, Advocate appearing on behalf of the appellants submits that the property at the hands of Gobind Ram was ancestral and, therefore, he could not have willed away the same to the defendants. He further submits that no issue with regard to coparcenary property has been framed, thus, there is illegality and perversity in the impugned judgments and decrees.

I have heard the learned counsel for the appellants and

appraised the paper book.

The onus to prove that the property at the hands of Gobind Lal, being ancestral, was upon the appellant-plaintiff. He produced the following documents:-

Ex.PW1/A	Assessment register for the year 1986-87
Ex.PW1/B	Assessment register for the year 1993-94
Ex.PW1/C	Assessment register for the year 1999-2000
Ex.PW1/D	Assessment list for the year 2001-02
Ex.PW1/E	Assessment register for the year 1986-87
Ex.PW1/F	Assessment register for the year 1992-93
Ex.PW1/G	Assessment register for the year 1999-2000
Ex.P1	Sale deed no.46/3 dated 16.07.99
Ex.P2	Death certificate.
Ex.P3	Receipt of M.C.Bawal.

From the perusal of the aforementioned documents, it is revealed that the appellant-plaintiff failed to summon or prove the documents from the revenue authorities, i.e., excerpt or kursinama.

In the absence of the property being ancestral in nature, the character and nature of the property at the hands of Gobind Lal was found to be self-acquired. It is settled law that the self-acquired property can be willed away in the manner a testator wanted. Both the Courts below have arrived at a finding that the appellant-plaintiff has failed to prove the property at the hands of Gobind Lal to be ancestral.

The plea that no issue of coparcenary has been framed is rejected for the reason that parties were alive to the situation and had led the evidence. It is a settled law that where parties are alive to the situation and issues have not been framed to lead evidence, subsequently plea of non-framing of issues cannot be taken.

I do not intend to differ with the findings rendered by both the Courts below, much less no substantial question of law arises for determination by this Court.

The appeal is accordingly dismissed.

November 6th, 2015
ramesh

(AMIT RAWAL)
JUDGE