

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

**Regular Second Appeal No.4845 of 2014 (O&M)  
Date of Decision: January 15, 2015.**

Jang Sher Singh

**.....APPELLANT(s).**

**VERSUS**

Raj Pal and others

**.....RESPONDENT(s).**

**CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Naveen S. Bhardwaj, Advocate  
for the appellant (s).

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**SURINDER GUPTA, J.**

Kartar Singh (since deceased) now represented by his legal heirs Jang Sher Singh-appellant and proforma respondents No.2 and 3 filed a suit seeking declaration that the gift deed executed and registered on 21.10.1997 by Ram Singh (since deceased) with regard to his land measuring 27 kanals 03 marlas, as fully described in the head note of the plaint, is illegal, null and void and for further relief of permanent injunction to restrain respondent-defendant No.1 Raj Pal from alienating the suit land. The plea of deceased Kartar Singh was that the suit land was ancestral property in the hands of respondent No.2, who was issueless and after his death, plaintiff will be the only reversioner to succeed him. He also challenged the adoption of respondent-defendant No.1 By Ram Singh, defendant No.2(since deceased).

Respondent-defendant No.1 and defendant No.2(since deceased) contested the claim of the plaintiff inter-alia pleading that Ram Singh, defendant No.2 was the exclusive owner of the suit land. Respondent-defendant No.1 was never adopted by defendant No.2 but he was brought up by him. Despite the fact that he was not legally adopted, defendant No.2 treated him like his son and executed gift deed dated 21.10.1997 regarding the suit land in his favour.

Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether gift deed dated 21.10.1997 executed by defendant no.2 in favour of defendant no.1 is illegal, null and void and liable to be set aside? OPP
- (2) Whether plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
- (3) Whether the suit is bad for the purpose of court fee? OPD
- (4) Whether suit is not maintainable? OPD
- (5) Relief.

The suit was dismissed by the Civil Judge (Senior Division), Yamuna Nagar with the observations regarding the competence of Ram Singh, defendant No.2 to dispose of this property by way of gift deed in para 32 of his judgment as follows:-

32. *Admittedly, Nagina, father of Ram Singh expired after enforcement of the Hindu Succession Act, 1956 and Ram Singh inherited the property from his father Nagina. Admittedly, Ram Singh did not (sic left) behind a male or female issue. So, he was absolute owner of the agricultural land held by him and, thus, he was competent to dispose of the same in a manner as he like. The Apex*

*Court of the Country in case of Dipo's case (supra) (Smt. Dipo Vs. Wassan Singh AIR 1983 SC 846) came across to deal with such situation and relying upon Mulla's Principles of Hindu Law (15<sup>th</sup> Edition), wherein it is stated "If A inherits property, whether movable or immovable, from his father, it is ancestral property as regards his male issue. If A has no son, son's son, or son's son's son in existence at the time when he inherits the property, he holds the property as absolute owner thereof and he can deal with it as he pleases....A person inheriting property from his three immediate paternal ancestors holds it, and must, hold it, in coparcenary with his sons, son's sons and son's son's sons but as regards other relations he holds it and is entitled to hold it, as his absolute property."*

The first Appellate Court affirmed the finding of Civil Judge (Senior Division) and dismissed the appeal filed by the appellant-legal representative of plaintiff Kartar Singh.

I have heard learned counsel for the appellant and perused the case file with his assistance.

Admittedly, Ram Singh was issueless, when suit was filed. Even if suit property was ancestral property, he was competent to alienate the same. Respondent-defendant No.1 never claimed himself to be an adopted son of Ram Singh. While discussing the relations of respondent-defendant No.1 with Ram Singh, first Appellate Court in para 13 of the judgment has observed as follows:-

*"13. Now comes the turn of deciding the crucial issue as to whether or not defendant No.2 was competent to execute the impugned Will and gift deed in favour of defendant No.1. Defendant No.2 had died after filing*

*written statement and his plea in the written statement was that he had no issue of his own; that defendant No.1 was his wife's brother's son; that mother of defendant No.1 expired when he was just 1½ years old; that defendant No.1 has been living with him since the time of death of his mother; that although defendant No.1 was not legally adopted yet he was being treated by him and his wife as their son and that he had executed the impugned gift deed and Will in favour of defendant No.1 in lieu of services rendered by him. So, there was unambiguous admission on the part of defendant No.2 that he had voluntarily disposed of the suit land in favour of defendant No.1 due to services rendered by him."*

Learned counsel for the appellant could not raise any submission to counter the settled proposition of law that the suit land was not ancestral property in the hands of Ram Singh, rather he was absolute owner of the same and his brother Kartar Singh during the life time of Ram Singh had no right, title or interest therein.

On perusal of the paper-book and judgments of both the Courts below, I find no legal or factual infirmity therein. No question of law what to talk of substantial question of law arises calling for any interference in the judgments of the Courts below.

As a sequel of my discussion above, this appeal has no merits.

Dismissed.

**January 15, 2015.**  
*Sachin M.*

**( SURINDER GUPTA )**  
**JUDGE**