

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

RSA No.606 of 2014 (O&M)
Date of decision : 13.02.2015

Amrik Singh

...Appellant

Versus

Uggar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay Lath, Advocate
for the appellant.

AMIT RAWAL, J. (Oral)

This Regular Second Appeal is at the instance of appellant-plaintiff against the judgment and decree of trial Court dated 27.09.2010, whereby the suit for declaration qua his claim being co-owner to the extent of 11/70 share in the suit property described in the plaint and as well as for joint possession and challenge to Will dated 18.08.1998 alleged to have been executed by the Teja Singh who is none else but father of the appellant-defendant No.1 to 5 and 9 to 12 be held legal and valid, has been dismissed and appeal filed against the same has also been dismissed.

The appellant-plaintiff stated in the suit that Teja Singh's father bequeathed away property in favour of his children including plaintiff vide Will dated 18.08.1998 Ex.D2 as the property at the hands of Teja Singh was

ancestral. The case of appellant-plaintiff was controverted by the respondents-defendants by filing a written statement wherein it was specifically stated that the plaintiff was separated since long time back and was given house at Rajpura and in Village Majri, which is alleged to have been sold. The factum that the property at the hands of Teja Singh was ancestral was also denied. It is also stated that Phaggu had a small holding i.e. 14 bigha 2 ½ biswa whereas Teja Singh was owner of land measuring 82 Kanals 6 Marlas.

Mr. Vijay Lath, learned counsel appearing on behalf of appellant in support of his grounds of appeal has submitted that both the Courts below have committed illegality and perversity in dismissing the suit as there was umpteen number of evidence on record to show that property at the hands of Teja Singh, which has fallen from Phaggu was ancestral and thereof the appellant-plaintiff had right by birth and Teja Singh could not have executed a Will dated 18.08.1998 except for legal necessity. He has further submitted that Teja Singh along with sons were the co-parceners. He further submitted that respondents-defendants failed to examine the witnesses of the Will, much less, the scribe, though there is no mention of scribe on the Will.

In support of his arguments, he has relied upon following judgments :-

- a) *C.N. Arunachala Mudaliar (Appellant) V. C.A. Muruganatha Mudaliar and another, (Respondents), AIR 1953 Supreme Court 495.*
- b) *Sheela Devi V. Lal Chand, 2006(1) R.C.R. (Civil) 96.*

- c) *Budh Raj and others Vs. Bhanwar Lal, AIR 1954 AJMER 69 (Vol.41, C.N. 69).*
- d) *Kundanbai w/o Jainarayan Vs. Satnarayan and others, AIR (38) 1951 Nagpur 270 {C.N. 74.} (1).*

to contend that the property which has fallen at the hands of the plaintiff from his grandfather, the character and nature of the property would be ancestral. In support of his submission, he has also relied upon para 221 of the Mulla's Hindu Law.

I am afraid the aforementioned arguments of the learned counsel for the appellant-plaintiff, sans merit, and the appeal is liable to be dismissed for following reasons:-

1. The law on the expression “ancestral property” is no longer res integra.
2. The person in order to prove the property is ancestral or not, the property must devolve upon the person from his three descendents.

In the instance case, the appellant-plaintiff had failed to prove that the property at the hands of Phaggu has fallen from his father and, therefore, the plaintiff being grandson of Phaggu cannot be said to have a right by birth or claim that the property at the hands of Phaggu was ancestral. There is no dispute to the proposition of law laid down in the aforementioned judgments of Hon'ble the Supreme Court of India in *C.N. Arunachala Mudaliar (Appellant) v. C.A. Muruganatha Mudaliar and another, (Respondents), AIR 1953 Supreme Court 495*, where in paragraph 12 Hon'ble Supreme Court has culled out that a ratio descendi in respect of a dispute which had arisen as to the nature of the property being ancestral or

not. The Hon'ble Supreme Court of India held that the property of the grandfather can normally vest in the father as the ancestral property and when father inherits such property on the death of the grandfather or receives it by partition made by the grandfather himself during the lifetime, the ratio descendi laid down by Hon'ble the Supreme Court of India irresistably lays down that in order to claim the nature of the property being ancestral, the property must devolve upon the person from any of three ancestors. Similarl ratio descendi law has been laid down by various other Courts in the judgments cited (Supra).

Though the appellant-plaintiff has himself attempted to show that the property at the hands of Teja Singh was ancestral but the excerpt shows that the property has devolved upon Teja Singh from his father and, therefore, the property at the hands of the plaintiff cannot be said to have fallen from the three ancestors. The respondent-defendants have proved the Will by examining the relatives of the witnesses who are stated to have died. Even otherwise, as per the Will, the appellant-plaintiff has been given 1/7th share along with other brothers, therefore, there could not be any grievance that the appellant-plaintiff has been deprived of his share or there is deviation from natural succession.

Even otherwise, it has come on record that the appellant-plaintiff had been given house in Rajpura and in Village Majri which have been sold. Whatever the evidence which has come on record shows that the property which was held by Phaggu was only 14 bigha and 2 ½ biswas, whereas Teja Singh was owner of land measuring 82 kanals 6 marlas.

Thus, even assuming for arguments appellant-plaintiff seek the

property at the hands of Teja Singh was ancestral even then there is no identification as to which of the property would be the ancestral. Be that as it may. The plaintiff has failed to prove that the property at the hands of Teja Singh was ancestral.

Both the Courts below have held rendered a finding of fact and law after appreciating the oral and documentary evidence.

No fault can be found with the findings rendered by both the Courts below.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, the present appeal is dismissed.

13.02.2015

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**(AMIT RAWAL)
JUDGE**