

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

RSA No.1463 of 1987 (O&M)
Date of decision : 16.02.2016

Zail Singh and another

...Appellants

Versus

Santo @ Basant Kaur and ors.

...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. J.S. Brar, Advocate for the appellants.

Mr. Arun Bansal, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby suit seeking declaration to the effect that they are owner in possession of the land measuring 128 kanals 13 marlas comprising in khasra Nos.53/3/1 (3-2) 3/2 (3-2), 8/1(6-1), 13 (8-0), 14/1 (4-10), 18 (8-0), 23(8-0), 56/4(8-0), 5(7-12), 6/1(1-5), 7/3(1-7), 142/6(8-0), 7/1(4-0) 142/14/2(4-0), 15(8-0), 685(1-13), 995/1(1-3), 912(0-4), 142//17(7-8), 142//16/2(3-4), 53//4(7-7), 7/2(6-11), 8/2(1-18), 14/2(1-19) 56//2/2(4-10), 3/1(0-16), 3/2(7-4) 8/1(1-17), and 1/4th share of land measuring 69 kanals comprising in khasra Nos.110/17(8-0), 8(8-0), 9/1(5-12), 12/2(5-12) 13(8-

0), 14(8-0), 20/1(1-12), 931(0-4) 110//7/1(1-12), 17/2(6-8), 18/1(3-0), 18/2(5-0), 19/1(5-0), 19/2(3-0), situated in Village Jodhpur Pakhar and the defendants have no right or title in the same and as well as consequential relief of permanent injunction restraining the defendants from dispossessing the plaintiffs from the suit land illegally and forcibly, much less, from alienating or creating third party rights by way of sale mortgage, gift, exchange etc., has been dismissed.

Mr. J.S. Brar, learned counsel appearing on behalf of appellants-plaintiffs submits that suit was filed on behalf of Zail Singh and Ajaib Singh sons of Ajmer Singh on the ground that property at the hands of Ajmer Singh was ancestral as it has fallen to him from Surrender, grandfather, to Bishan Singh and then Bishan Singh (father of Ajmer Singh) to Ajmer Singh. Ajmer Singh had other two sons Gurdial and Moga Singh. The factum of the property being ancestral in nature has been proved through the testimony of PW4 Kanungo who has brought on record original excerpts Ex.PX to this effect. This evidence has totally been ignored by both the Courts below. The ground of seeking declaration was based on two foundations one on the point of the property being ancestral and other on the basis of Will dated 07.02.1978. Even if the appellant is not able to prove the Will, then nature and character of the property has proved to be ancestral, therefore, they are/were entitled to the respective shares. Ajmer Singh had two wives one Kartar Kaur and Santo @ Basant Kaur. Plaintiffs are the sons of Ajmer Singh, whereas respondents are the widow and daughters i.e. respondent No.1 is a widow and respondent No.2 is daughter of Ajmer Singh from the loins of Santo, whereas respondent No.3 to 5 are

the daughters from the loins of Kartar Kaur, and submits that following substantial questions of law arises for determination:-

1. Whether the property at the hands of Ajmer Singh was ancestral in nature?
2. Whether the appellants are entitled to declaration vis-a-vis their respective shares?
3. Whether the judgment and decree of Courts below suffers from illegality and perversity as there is mis-appreciation of documentary evidence Ex.PX?

and submits that during the pendency of the proceedings of the suit before the Courts below, Santo had died. Her daughter was already impleaded but she was also died. As per the provision of Sub-Rule 2 of Order 3 of Order 22 of the Code of Civil Procedure, the estate of the deceased continuous to be represented and, therefore, it would not be fatal, much less, once property has been proved to be ancestral in nature, findings rendered by this Court, would not be adverse the interest of the LRs of Dalip Kaur.

There is no representation on behalf of rest of the respondent despite service. This appeal is of 1987.

I have heard learned counsel for the parties and appraised the paper book.

Harnek Singh Kanungo appeared as PW4. He brought excerpts Ex.PX which according to him was prepared in accordance with the revenue record. Said witness was not cross-examined and as per the pedigree table Ex.PX, it has been found that property had devolved upon Ajmer Singh

from his late grandfather Surender. The plaintiffs being fourth succession in lineage are thus entitled to claim the right in the property being coparcener. This fact has totally been ignored by both the Courts below and rather entire focus had been on the Will dated 07.02.1978 which the plaintiff miserably failed to prove. I am of the view that both the Courts below have failed to advert to the aforementioned documentary evidence on record and thus, there is illegality and perversity.

In this manner, each of the sons i.e. Zail Singh, Ajaib Singh, had become the joint owners, in joint possession, to the extent of $\frac{1}{4} + \frac{1}{28}$ share each (i.e. $\frac{2}{7}$ share each), whereas, widow shall be deemed to be joint owner, in joint possession, to the extent of $\frac{1}{4} + \frac{1}{28}$ share (i.e. $\frac{2}{7}$ share), and, four daughters, shall be joint owners, in joint possession, to the extent of $\frac{1}{28}$ share each in the suit property.

Accordingly, question of law as noticed above, are answered in favour of appellants-plaintiffs and against the respondents-defendants. Judgment and decree of both the Courts below are set aside. Suit is decreed.

With the aforementioned observation, appeal is allowed.

Decree-sheet be prepared.

16.02.2016

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**(AMIT RAWAL)
JUDGE**