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

**RSA-334-1988 (O&M)
Date of decision : 04.05.2016**

Vishvdeep Singh

... Appellant

Versus

Puran Singh (deceased through LRs)

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Singh, Advocate
for the appellant.

Mr. Rakesh Chopra, Advocate
for respondent Nos.2 and 5.

Mr. Dinesh Kumar, Advocate for
Mr. Munish Kumar, Advocate
for respondent No.8.

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?

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit for joint possession instituted, during the life time of Kuldeep Singh, grandfather of the plaintiff, has been dismissed by both the Courts below.

Mr. Vikas Singh, learned counsel appearing on behalf of the appellant-plaintiff submits that the grandfather-defendant No.1, vide sale deeds dated 28.06.1978 (Ex.D-1) and 18.12.1992 (Ex. D-2), sold the suit land to the defendant No.2, in fact, the property at the hands of the grandfather was

coparcenary property and therefore, he could not have sold the same except for legal necessity. The father of the plaintiff predeceased defendant No.1-grandfather and thus, plaintiff claimed 1/4th share. He submits that the both the Courts below have committed illegality and perversity in declining the relief as PW-6 Babu Ram-Kanungo has been examined and brought the excerpt to show that the original owner of the property, in dispute, was Harnam Singh, who was the great great grandfather of the plaintiff and the kursinama i.e. pedigree table (Ex.P-34) has also been proved on record. He further submits that it is a settled law that whenever, the father transfers the land in favour of his sons being coparcenary, it is acceleration of succession. He further submits that the finding of the trial Court with regard to the property having not sold for legal necessity would not give the character and nature of the property as ancestral, thus, urges this Court to formulate the following substantial questions of law:-

1. Whether the judgment and decree of both the Courts below suffers from illegality and perversity.
2. Whether the property at the hands of the defendant No.1 was ancestral property, particularly when the excerpt and kursinama i.e. pedigree table, have been proved on record.

Mr. Rakesh Chopra, learned counsel appearing on behalf of respondents No. 2 and 5 submits that both excerpt and pedigree table are not original ones, but the photocopy of the original and in view of the High Court Rules and Orders, which have been affirmed in the judgement rendered by this Court in **“Banta Singh and others V/s Phuman Singh and others” 1972 PLR 275**, the aforementioned document could not be looked into. No other

documents have been placed on record to show the character and nature of the property as ancestral. Even otherwise, the suit for joint possession, during the lifetime of the grandfather, is not maintainable as no right subsisted despite the fact the father of the plaintiff predeceased, thus, urges this Court for affirming the concurrent findings, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view there is no substance and merit in the submissions of Mr. Vikas Singh, Advocate, for, proving the nature and character of the property being ancestral, “original” excerpt and the kursinama has to be proved, this aforementioned fact of mine has already been laid down by this Court in the judgment cited supra. Once, the appellant-plaintiff has failed to prove the character and nature of the property as ancestral, even, the suit for joint possession claiming 1/4th share, during the lifetime of grandfather, was not maintainable. Both the Courts below have concurrently rendered finding against the appellant(s)-plaintiff(s).

Keeping in view the aforementioned facts and circumstances of the case, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

With the aforesaid observations, the appeal stands dismissed.

04.05.2016
yogesh

(AMIT RAWAL)
JUDGE