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

RSA-1912-1989

Date of decision : 17.02.2016

Balwinder Singh

...Appellant

Versus

Hardial Singh (deceased) through LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Manoj Kumar, Advocate
for the appellant.

Mr. Gagandeep Singh Wasu, Advocate
for the respondents.

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-defendant in the present regular second appeal is against the concurrent findings of the fact whereby, the suit, seeking declaration that the respondents-plaintiffs are the owner to the extent of 1/3rd share in respect of the land measuring 8 kanals 2 marlas out of measuring 24 kanals and 8 marlas as described in the suit, has been decreed by both the Courts below.

Mr. Manoj Kumar, learned counsel appearing on behalf of the appellant-defendant submits that the respondents-plaintiffs

have miserably failed to prove the property at the hands of the Tarlochan Singh being ancestral and Hardial Singh being 3rd generation in lineage cannot claim right in the property being ancestral in nature. The aforementioned facts have totally been ignored, even otherwise, no original excerpt or pedigree table has been proved on record except Jamabandi (Ex.P6) to show that the property was owned by Munsha Singh. Munsha Singh was succeeded by Tarlochan Singh and Hardial Singh is the plaintiff. In view of the aforementioned submission, the following substantial questions of law are formulated:-

- 1) Whether the property at the hands of the Tarlochan Singh was ancestral or not?
- 2) Whether Hardial Singh can term as co-parcener having right by birth in the property owned by Munsha Singh.

Mr. Gagandeep Singh Wasu, learned counsel appearing on behalf of the respondents-plaintiffs submits that there is a categorical admission on the part of the appellant-defendant viz-a-viz the character and nature of the property being ancestral. The Jamabandi (Ex.P6) shows that Munsha Singh was the owner of the property and therefore, Hardial Singh being 3rd generation lineage had the right by birth. The concurrent findings of the fact cannot be interfered until and unless, substantial question of law arises for determination.

In rebuttal, Mr. Manoj Kumar, learned counsel appearing on behalf of the appellant-defendant submits that the appellant-defendant set up a Will of Munsha Singh which has been proved by

both the Courts below.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a merit in the aforementioned contentions, for the reason, that Hardial Singh is 3rd generation in lineage. The respondents-plaintiffs have failed to lead any evidence to show that Munsha Singh succeeded the property from his father, therefore, Hardial Singh being 3rd generation in lineage, had right by birth. In the absence of the evidence, the character and nature of the property cannot be referred to as ancestral. Ex.P6 is the Jamabandi which shows that Munsha Singh was the owner of the property. It does not show that he had inherited it from his father. As per the High Court Rules and Orders and the ratio decidendi culled out by the judgment of this Court **1972 PLJ 275 "Banta Singh & others Vs. Phuman Singh & others"**, whereby the procedure has been prescribed for proving the nature of the property being ancestral, in essence, original excerpt has to be proved on record to show that the entire property was ancestral in nature. In my view, the respondents-plaintiffs have not proved on record the original excerpt or pedigree table to show that the nature and character of the property is ancestral, thus, a plaintiff being not 4th generation in lineage is not entitled to relief as sought.

In view of the aforementioned facts, I am of the view that the judgment and decree of both the Courts below holding the property to be ancestral at the hands of Tarlochan Singh is totally erroneous and perverse and accordingly, the same is hereby set

aside. The substantial questions of law are answered in favour of the appellant-defendant and against the respondents-plaintiffs. Suit stands dismissed. Decree sheet be prepared.

With the aforesaid observations, the appeal is allowed.

17.02.2016
yogesh

(AMIT RAWAL)
JUDGE