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

RSA-972-1991

Date of decision : 24.02.2016

Sukhmander Singh and others

...Appellants

Versus

Balwant Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.S. Jattana, Advocate and
Mr. C.S. Jattana, Advocate
for the appellants.

Mr. J.S. Brar, 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 appellants-plaintiffs are aggrieved of the judgment and decree dated 14.11.1990 rendered by the lower Appellate Court, whereby the findings on issue No.1, have been set aside.

Mr. A.S. Jattana and Mr. C.S. Jattana, learned counsel appearing on behalf of the appellants-plaintiffs submits that the trial Court rendered the findings on issue Nos.1, 2, 5, 7 & 8 in favour of the appellants-plaintiffs and on other issues in favour of the respondents-defendants, in essence, the suit

property was that the vendor of a coparcenary property acting as *karta* could not be alienate the property except for legal necessity. The trial Court on the basis of oral and documentary evidence held that the property was coparcenary in nature, but alienation was for legal necessity. The aforementioned judgment and decree was assailed by both the parties, whereas the appeal filed by the appellants-plaintiffs has been dismissed and the cross-objections at the instance of the respondents-defendants have been accepted by holding that the property at the hands of Balwant Singh, the father of the parties, was the self-acquired property, in essence, not ancestral. He further submits that as per mutation (Ex.P-12), the property was mutated in the name of Balwant Singh and his mother Rajinder Kaur. However, before the lower Appellate Court, an application under Order 41 Rule 27 of the Code of Civil Procedure (hereinafter called 'CPC'), seeking the permission of the Court to place on record Jamabandis for the year 1926-27, 1930-31, 1959-60 and 1960-61 was moved, but the lower Appellate Court dismissed the same on the ground that the evidence was not essential and necessary for the adjudication of the *lis*, much less, there were no pleadings and urges to this Court to formulate the following substantial questions of law:-

1. Whether the judgment and decree of the lower Appellate Court accepting the cross-objections of the defendants holding the property to be self-acquired at the hands of Balwant Singh is justified or not?
2. Whether the finding rendered by the lower Appellate Court declining the application filed under Order 41 Rule 27 CPC for placing on record the jamabandis, aforementioned, is sustainable or not?
3. Whether the property at the hands of Balwant Singh was

ancestral or not?

Mr. J.S. Brar, learned counsel appearing on behalf of the respondents-defendants submits that the appellants-plaintiffs have failed to prove the character and nature of the property being ancestral. The name of the father of Balwant Singh was Partap Singh and great grandfather was Sardara Singh. No evidence has come on record to show that the property at the hands of Balwant Singh has been devolved from great grandfather Sardara Singh and therefore, the appellants-plaintiffs being 4th generation in lineage would be entitled to claim the right by birth. In the absence of any evidence, rightly so, the lower Appellate Court accepted the cross-objections. The trial Court erroneously relied upon the Mutation (Ex.P-12) in forming opinion that the property was ancestral, but the alienation was for legal necessity and prays for dismissal of the appeal as no substantial questions of law arises for the adjudication of the *lis*.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal. The Rules and Orders of this Court provide that for proving the property as ancestral, original revenue excerpt through testimony of the Revenue Officer has to be proved. This fact is supported by the judgment of this Court in **“Banta Singh and others V/s Phuman Singh and others” 1972 PLJ 275**. No effort has been made to bring on record such evidence. The jamabandis sought to be placed on record by way of additional evidence would not make any difference in the absence of the original excerpt. No pedigree table has been produced on record to show that the property at the hands of Balwant Singh devolved from great grandfather and the appellant(s)-plaintiff(s) being 4th generation in lineage had

a right by birth. In the absence of direct and cogent reasons, I am of the view that the findings rendered by the lower Appellate Court setting aside the judgment and decree on issue No.1 is perfect and justified.

Keeping in view the aforementioned facts, the judgment and decree dated 14.11.1990 of the lower Appellate Court is upheld and the substantial questions of law as noticed above are answered in favour of the respondents-defendants and against the appellants-plaintiffs.

With the aforesaid observations, the appeal is dismissed.

24.02.2016
yogesh

(AMIT RAWAL)
JUDGE