

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

R.S.A.No.2007 of 2007 (O&M)

Date of Decision: January 21st, 2016

Harnek Singh

...Appellant

Versus

Hakam Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

**Present: Mr.Amarjit Markan, Advocate,
for the appellant.**

**Mr.B.P.S.Virk, Advocate,
for the respondents.**

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby the suit for declaration to the effect that the sale deeds bearing Vasika Nos.2012 dated 9.3.1984, 2239 dated 27.2.1997, registered on 28.2.1997 and 1446 dated 3.9.1998, 2585 dated 25.1.1999, registered on 27.1.1999 are totally wrong, illegal and fraudulent as the same could not be executed by Surjan Singh in favour of his children, brothers of the plaintiff, as he has 1/3rd share, for, the nature and character of the property at the hands of Surjan Singh was ancestral with a consequential relief of permanent injunction restraining them from interfering in his possession in respect of khasra Nos.22//18 (4-0), 23min (4-0), situated at Village Tarkhan Majra, Tehsil Samana, District Patiala, has been dismissed.

Mr.Amarjit Markan, learned counsel appearing on behalf of the appellant-plaintiff submits that the four sale deeds, referred to above, have been challenged, but on going through the documentary evidence brought on record, sale deeds, Ex.P3 and Ex.P4, cannot be said to be from the kitty of the ancestral property and, therefore, the plaintiff does not have any stake on those. He has referred to the judgments and decrees of both the Courts below to contend that the documents, Ex.P30/A, Ex.P28/A and Ex.P8/26, the translated copies of which have been annexed as Annexures A-1 to A-3, have not been referred to, which *ex-facie*, proves the nature and character of the property as ancestral. Even the Lower Appellate Court, being the last Court of fact and law, has not referred the aforementioned documents and, thus, there is illegality and perversity and the appellant has been deprived of his right of consideration of those documents and, thus, the following substantial questions of law arise for determination by this Court:-

- a) Whether the judgments and decrees of both the Courts below suffer from illegality and perversity when there is no reference to the documents proved on record?
- b) Whether the property at the hands of Surjan Singh vis-a-vis the sale deeds Ex.P5 and Ex.P6 was ancestral or not?

Mr.B.P.S.Virk, learned counsel appearing on behalf of the respondent-defendants submits that Surjan Singh by dint of his hard work and labour, had also acquired land measuring 62 kanals 4 marlas. The area referred to in the sale deeds, Ex.P5 and Ex.P6, forming part of the property is not inherited from his grand-father, but of his own, therefore, there was no requirement of the Courts below to refer to the documents, much less, there cannot be said to be illegality and perversity, in essence, no substantial

question of law arises for determination.

In rebuttal, learned counsel for the appellant-plaintiff submits that the property, alleged to have been acquired by Surjan Singh, was not by dint of his hard work and labour, but the same came out from the common pool and, therefore, the same be treated as ancestral.

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

The onus to prove the nature and character of the property at the hands of Surjan Singh being ancestral, was of appellant-plaintiff. Vis-a-vis the property described in the sale deeds, Ex.P3 and Ex.P4, I am of the view that the plaintiff has miserably failed to prove that Surjan Singh had purchased the same from the common pool. The focus would be on the sale deeds, Ex.P5 and P6 dated 9.3.1984 and 27.1.1999. The appellant-plaintiff has not been able to prove on record the documents, Ex.P30/A, Ex.P28/A and Ex.P8/26, translated copies of the same have been annexed as Annexures A-1, A-2 and A-3 with Misc.Application No.13699-C of 2015, which have some semblance with regard to the particulars of the property referred to in Ex.P-5 and Ex.P-6, but on going through the findings rendered by the trial Court, much less, by the Lower Appellate Court, it is discernible that there is no reference to the same. The Lower Appellate Court, being last Court of law and fact, is enjoined upon an obligation to refer each and every document. Since there is no reference in the impugned judgment and decree to the aforementioned documents, the Lower Appellate Court came to the finding that the plaintiff failed to prove the nature and character of the property. Such finding, in my view, is not only perverse, but erroneous owing to the reasons mentioned above.

Accordingly, the judgment and decree of the Lower Appellate Court is hereby set-aside. The question No.1 is answered in favour of the appellant-plaintiff. Vis-a-vis question No.2, the same is kept open, to be decided only when the Lower Appellate Court decides the appeal after giving reference to the documents, mentioned above. The parties shall be free to refer all the documents led in support of their respective stands before the Lower Appellate Court.

Accordingly, the matter is remitted back to the Lower Appellate Court to decide the appeal afresh in accordance with law.

It is expected that the Lower Appellate Court shall decide the appeal within a period of four months from the date of receipt of certified copy of this order.

The parties, through their counsel, are directed to appear before the Lower Appellate Court on 10.2.2016.

Records of the Courts below be sent back immediately.

The appeal stands disposed of.

January 21st, 2016
ramesh

(AMIT RAWAL)
JUDGE