

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

R.S.A.No.4096 of 2008 (O&M)

Date of Decision: March 10, 2016

Prem Singh & others

...Appellants

Versus

Narinder 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.D.V.Sharma, Senior Advocate with
Mr.Kuldeep Singh, Advocate &
Mr.H.S.Tuli, Advocate for
Mr.S.S.Rangi, Advocate,
for the appellants.

Mr.Akshay Bhan, Senior Advocate with
Mr.Santosh Sharma, Advocate,
for respondent No.1.

Mr.Y.P.Singla, Advocate,
for respondent Nos.2 to 10.

Ms.Aarti Gupta, Advocate,
for respondent Nos.11 & 12.

AMIT RAWAL, J. (Oral)

Appellant-defendant Nos.5, 6 and 7 are aggrieved of the concurrent findings of facts and law, whereby the suit for declaration with consequential relief of permanent injunction vis-a-vis the estate of Bhagwan Singh son of Nathu Ram son of Dharma, claiming it to be ancestral, has been decreed by both the Courts below.

Mr.D.V.Sharma, learned Senior Counsel assisted by

Mr.Kuldeep Singh, Advocate, appearing on behalf of the appellant-

defendants submits that the respondent-plaintiff has miserably failed to prove the character and nature of the property being ancestral. The self-serving statement of Bhagwan Singh in a suit filed by Narinder Singh, clothing the property to be ancestral in nature, is not sufficient unless and until the original excerpt and pedigree-table as per the High Court Rules and Orders are proved on record. The entire basis of the suit was that the land at the hands of Bhagwan Singh was ancestral and, therefore, he could not alienate the same to various persons through different sale deeds as mentioned in the suit, therefore, the respondent-plaintiff claimed 1/33rd share in the estate of Bhagwan Singh. He further submits that Narinder Singh plaintiff, in cross-examination, admitted the factum of the family arrangement. Be that as it may, even if the family arrangement is to be ignored, yet the respondent-plaintiff failed to discharge the onus as per the provisions of Section 101 of the Indian Evidence Act and, therefore, there was no occasion for rebutting the same and, thus, urges this Court for formulation of the following questions of law for adjudication:-

- 1) Whether the property at the hands of Bhagwan Singh son of Nathu Ram son of Dharma would be self-acquired property and the plaintiff, being 3rd generation in lineage, would be entitled to succeed 1/33rd share or not?
- 2) Whether the Courts below have committed illegality and perversity in decreeing the suit?
- 3) Whether the respondent-plaintiff has discharged the burden or not?

On the other hand, Mr.Akshay Bhan, learned Senior Counsel assisted by Mr.Santosh Sharma, Advocate, appearing on behalf of plaintiff-

respondent No.1 submits that the family arrangement as set up by the defendants has not been proved. Dharma had two sons, namely, Nathu Ram and Chet Ram. Chet Ram was married to Santo. Both of them died issueless. Dharma owned land measuring 684 Bighas and 342 Bighas each came to the share of Nathu Ram and Chet Ram. Share of Chet Ram came to the share of the plaintiff to the extent of 114 Bighas, whereas 114 Bighas each came to the share of Ghansham son of Tarlok Singh son of Nathu Ram and Karma son of Des Raj son of Nathu Ram. The share was with regard to the estate of Bhagwan Singh, who inherited the same, therefore, he could not have alienated the property in favour of 3rd generation in lineage as per the personal necessity. The jamabandies showed that the property had devolved upon Bhagwan Singh from Nathu Ram and Nathu Ram from Dharma and rightly so, the Court decreed the suit. The judgment and decree suffered by Bhagwan Singh in favour of the appellants was collusive one, though he admitted the character and nature of the property being ancestral and, therefore, there was no need to lead the evidence vis-a-vis the nature of the land and, thus, prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submissions of Mr.Sharma for the reason that the plaintiff, who has to stand on his own legs, has miserably failed to discharge the onus whether the property at the hands of Dharma had fallen from his father. It has not been proved as to whether property/land at the hands of Bhagwan Singh had fallen from great grand father, thus, character and nature of the land being coparcenary/ancestral could not be ascertained. As per Para No.221, 21st Edition of Mullah Law, it is the 4th generation in lineage, who can claim the

right to the property being ancestral or being co-parcener in nature. Mere averment in the suit instituted by the defendants would not presume the character and nature being ancestral, thus, Bhagwan Singh had, during his life time, alienated the property in the manner he wanted to and the respondent-plaintiff did not have any right for claiming the property to be coparcenary. Even otherwise, as per the High Court Rules and Orders and ratio decidendi culled out in the judgment rendered in **Banta Singh & others Versus Phuman Singh & others**, 1972 PLJ 275, neither the original excerpt or the pedigree table has been brought on record. Even if the excerpt has been brought on record, it has not been proved on record that the land measuring 684 Bighas had fallen to Dharma from his father. The plaintiff, being 3rd generation in lineage, has no right to claim the property being co-parcener.

Keeping in view the aforementioned facts and circumstances, the judgments and decrees of both the Courts below, which have not noticed the aforementioned facts and the position of law are not sustainable and hereby set-aside, in essence the suit is dismissed. The questions of law, aforementioned, are answered in favour of the appellant-defendants and against the respondent-plaintiff.

The appeal stands allowed. Decree-sheet be prepared accordingly.

March 10 , 2016
ramesh

(AMIT RAWAL)
JUDGE