

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

R.S.A.No.4408 of 2009 (O&M)

Date of Decision: December 01, 2016

Chanan Singh @ Channa Singh

...Appellant

Versus

Bhura Singh & others

...Respondents

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

**Present: Mr.Aakash Singla, Advocate,
for the appellants.**

**Mr.Harsh Aggarwal, Advocate,
for respondent Nos.1 & 2.**

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings, whereby his suit for joint possession, declaration and permanent injunction, has been dismissed.

Mr.Aakash Singla, learned counsel for the appellant-plaintiff submits that the Lower Appellate Court has abdicated in not assigning any reasons while rendering findings in Paragraph 24 onwards, in essence there is no reference to the Excerpt Ex.P2 heavily relied upon by the plaintiff. The excerpt had been brought on record on the basis of framing of issue No.1-A, but the Lower Appellate Court has not determined the law points in view of the provisions of Order 41 Rule 31 CPC. There is no adjudication of the other issues, thus, the impugned judgments and decrees are not sustainable.

Per contra, Mr.Harsh Aggarwal, learned counsel for respondent-defendant Nos.1 and 2 submits that the Courts below have

already examined the evidence. The Lower Appellate Court in case has to concur with the findings of the trial Court, there is no need to discuss the evidence and, thus, there is no illegality and perversity.

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

The reference to the arguments submitted by the appellant-plaintiff in Paragraph 13 of the judgment of the Lower Appellate Court reads as under:-

“The plaintiff claims the suit land to be his ancestral property, to have been inherited by his father from his grand father Moola Singh. Ex.P2 is the excerpt of the suit land as got proved by PW2 Harnek Singh. Office Kanungo, which contains copy of the Jamabandi for the year 1960-61 regarding the land measuring 246 kanals 6 marlas and the suit land is part thereof. There is a reference of mutation no.4266 dated 7.1.1980 whereby the inheritance of Moola Singh son of Maru was mutated in favour of Smt.Jal Kaur, widow and Harpal Singh, son. In that way, Harpal Singh got 123 kanals 2 marlas of land by way of inheritance from his father Moola Singh. In the copy of the jamabandi Ex.P2, there is also a reference of mutation no.4267 dated 7.1.1980 whereby the inheritance of Harpal Singh son of Moola Singh was mutated in favour of Smt.Jal Kaur, mother, Smt.Balwinder Kaur, widow Chamkaur Singh and Amrik Singh, sons and Sarabjit Kaur, daughter. In that way, Amrik Singh got 1/5th share in the land measuring 123 kanals 2 marlas owned by Harpal Singh, which comes to approximately 24 kanals 12 marlas. There is also a reference of mutation no.5033 dated 21.3.1987 in respect of the estate of Smt.Jal Kaur having been mutated in favour of Amrik Singh and Chamkaur Singh sons of Harpal Singh in equal shares.”

The findings rendered by the Lower Appellate Court while dismissing the appeal read thus:-

“I have considered the submissions made by the learned counsel for the parties and find that there is no reason to disagree with the findings recorded by the learned trial court that the suit land is non ancestral property of defendant Amrik Singh and therefore, the plaintiff has got no locus standi to assail the alienation of the same claiming the same to be his ancestral/coparcenary/joint Hindu family property. Moreover, the defendant Amrik Singh having inherited 1/5th share i.e. land measuring 12 kanals 6 marlas from his father Harpal Singh vide mutation no.4267 dated 7.1.1980 even that part of the land cannot be treated to be the ancestral property of the plaintiff because of the interpretation of Section 8 of the Hindu Succession Act, 1956 made by the Hon'ble Supreme Court of India in the case of citation Makhan Singh (D) by LRs Versus Kulwant Singh 2007 (2) CCC 471 (SC) based on the citation Commissioner of Wealth Tax, Kanpur etc. Versus Chander Sen etc. 1986 (3) SCC 567 in which their Lordships observed that:

“It is clear that under the Hindu Law, the moment a son is born he gets a share in the father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with very fact of his birth. Normally, therefore whenever the father gets a property from whatsoever source from the grand father or from any other source, be it separated property or not his son should have a share in that and it will become part of the joint Hindu family of his son and grand son and other members who form joint Hindu family with him. But the question is the position affected by S.8 of the Succession Act, 1956 and if so, how? The basic argument is that S.8 indicates the heirs in respect of certain property and Class I of the heirs includes the son but not the grand son. It includes however the son of the predeceased son. It is this position which has mainly induced the Allahbad High Court in the two judgments, we have noticed, to take the

view that the income from the assets inherited by son from his father from whom he has separated by partition can be assessed as income of the son individually. Under S.8 of the Hindu Succession Act, 1956 the property of the father who dies intestate devolves on his son in his individual capacity and not as karta of his own family. On the other hand, the Gujrat High Court has taken the contrary view.”

There is no reference to the excerpt as plaintiff Chanan Singh was 4th generation being son of Amrik Singh, who had inherited the property from Harpal Singh and Harpal Singh from Moola Singh, thus, the nature of the property, according to him, was ancestral. Having failed to advert to the documents, the finding that the property is not ancestral, in my view, is totally fallacious.

Accordingly, the impugned judgments and decrees are hereby set-aside and the matter is remitted back to the Lower Appellate Court to decide the appeal afresh in accordance with law and observations made herein on all the issues.

This Court is sanguine of the fact that the Lower Appellate Court shall decide the appeal as expeditiously as possible, perfectly within a period of six 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 20.12.2016.

Appeal stands disposed of.

December 01, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No