

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

RSA No.938 of 2009
Date of decision : 17.10.2016

Dayanand

...Appellant

Versus

Rammehar Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Mr. R.A. Sheoran, Advocate for the appellant.

Mr. Ajay Gupta, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby suit seeking declaration that agricultural land measuring 134 kanals 15 marlas comprising in Khewat No.43, Khatauni No.48 as per jamabandi for the year 1988-89 situated in Village Dandma being a joint hindu family coparcenary property owned and under possession of the plaintiff and defendant No.3 and, therefore, judgment and decree dated 16.11.1990 passed in Civil Suit No.934 of 1990 titled as Ram Mehar Singh etc. vs. Gora was against the law being null and void and not binding upon them, has been dismissed by both the Courts below.

Mr. Atul Lakhanpal, learned Senior counsel assisted by Mr.

R.A. Sheoran, Advocate appearing on behalf of appellant-plaintiff submits that declaration aforementioned was sought on the premise that plaintiff was adopted son of defendant No.3-Gora @ Goru son of Molu. Property at his hands was ancestral in nature as it had fallen from Mam Raj to Molu and from Molu to Goru father of appellant who being 4th in lineage having right by birth and in this regard has referred to the jamabandies for the year 1980-81 Ex.PW14/A and 1934-35 Ex.PW38/A.

He further submits that Daya Nand-appellant was adopted by Goru vide registered adoption deed dated 24.02.1971. Both the Courts below have declined the relief, as sought for, on the ground that all the documents produced on behalf of defendants shows the parentage of natural father namely Teka Ram. Before the lower Appellate Court, an application for additional evidence, by invoking the provisions of Order 41 Rule 27 CPC, was moved for placing on record sale deed dated 04.06.1996, electricity shop receipts dated 24.12.1986, pass book of the Dandma Cooperative Society Debt and Service Limited to the effect that all these documents showed that Daya Nand being adopted son of Goru. Decree effected in favour of the plaintiff in suit aforementioned could not have been affected as it was not for legal necessity. All these factors escaped the notice of the Court, therefore, there is gross illegality and perversity.

Per Contra, Mr. Ajay Gupta, learned counsel appearing on behalf of respondents-defendants submits that jamabandi aforementioned do not reflect the inheritance of the property by Molu from Mam Raj, in essence, appellant-plaintiff have failed to lead evidence in consonance with the provisions of High Court Rules and Orders namely Intkab and pedigree

table. Most of the documents as noticed by the lower Appellate Court shows that parentage of the appellant is of natural father. Concurrent findings of fact cannot be interfered into until and unless there is gross illegality and perversity and thus urges this Court for affirming of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Atul Lakhanpal, for, jamabandies mentioned above only reflected the ownership of the property in favour of Molu-grandfather of the appellant. Assuming that he has been adopted by the father, that would be Second Generation in lineage, whereas, there has to be three generation, when any person asserts the right in the property should be fourth generation.

Aforementioned view is taken from the para No.221 of 21st Edition of Mullas Hindu Law. No doubt registered document carries presumption of truth but same can be rebutted. The documents referred to by the lower Appellate Court i.e. Ex.DW7/D, Ex.DW9/D, Ex.DW8/A are of subsequent dates of adoption and showed the parentage of appellant to be of Tekka Ram.

In my view respondents-defendants have been able to rebut the authenticity of the registered documents, for, as Dayanand had not been treated as adopted son. In my view, appellant has miserably failed to discharge the onus, much less, averments in the plaint.

Even documents had been placed on record by way of additional evidence. If accepted to be son of Goru, yet in the absence of

essential documentary evidence i.e. Intkab and Pedigree table, show that the property of Molu inheriting from Mam Raj is conspicuously wanting.

For the reasons aforementioned, I do not intend to differ with the concurrent findings of fact.

No ground for interference is made out.

Dismissed.

17.10.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No