

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

R.S.A.No.4809 of 2010 (O&M)

Date of Decision: April 26th, 2016

Jai Singh & others

...Appellants

Versus

Rajinder Parshad & another

...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.RPS Ahluwalia, Advocate &
Mr.Pritam Saini, Advocate,
for the appellants.

Mr.Vinod S.Bhardwaj, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant-defendants are in Regular Second Appeal against the concurrent findings of facts and law, whereby the suit at the instance of the respondent-plaintiff claiming declaration that the judgment and decree dated 6.2.1992 passed in Civil Suit No.626 of 1991 and mutation No.3479 effected on the basis of the decree are null and void as the aforementioned decree required registration, has been decreed.

Mr.RPS Ahluwalia and Mr.Pritam Saini, learned counsel appearing on behalf of the appellants submit that the foundation/genesis of the suit was that the property at the hands of Ram Parshad was ancestral in nature and in this regard, respondent-plaintiffs have sought to place on record numerous documentary evidence from Ex.P1 to Ex.P16, but none of

the documents show that the property had developed upon Ram Parshad from his great grand-father Jassu and, thus, the consent decree dated 6.2.1992 in favour of his two sons could not have been set-aside being self-acquired property. Though the trial Court found that the respondent-plaintiff has failed to prove the character and nature of the property as ancestral, yet set-aside the decree on the ground that the same required registration, whereas the beneficiaries of the decree are Hari Chand and Jai Singh, who are none else but sons of Ram Parshad and being self-acquired property, Ram Parshad has suffered the consent decree and, thus, had a pre-existing right. The decree does not require any registration, thus, urges this Court to formulate the following substantial question of law for determination by this Court:-

Whether the consent decree dated 6.2.1992 executed by Ram Parshad in favour of his two sons required registration?

Mr.Vinod S.Bhardwaj, learned counsel appearing on behalf of respondent No.1 submits that no doubt the finding arrived at by the trial Court vis-a-vis the character and nature of the ancestral property has not been assailed by invoking the provisions of Order 41 Rule 33 CPC, but such plea can always be taken. The documentary evidence placed on record would show that the property at the hands of Ram Parshad devolved from his great grand-father Jassu and rightly so, the plaintiff, being the 4th generation in lineage, had a right by birth and in this background, the consent decree dated 6.2.1992, being without legal necessity, was assailed. However, the Lower Appellate Court gave the finding that the property was ancestral in nature. The other two sons, namely, Hari Chand and Jai Singh, in whose favour the consent decree has been passed, cannot be said to have

any pre-existing right and, therefore, the decree required registration, whereas the consent decree is in favour of Jai Singh, who is not related to Ram Parshad and, therefore, the decree, creating a right for the first time in favour of the beneficiaries, required registration and rightly so, both the Courts below non-suited the appellant-defendants on this ground and, thus, urges this Court for affirmation of the findings.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the finding rendered by the Lower Appellate Court vis-a-vis the property being ancestral in nature is not based upon the examination of documentary evidence. The Hindi translation of Khatauni Pemaish and Naksha Hakdarwar (Ex.P11 and Ex.P12) shows the land to be in possession of Ram Parshad and it does not show that his father Prabh Dayal inherited the same from his father Jassu. It is now settled law that for the purpose of creating a right by birth in the ancestral property, a person has to be 4th generation in lineage. The plaintiff, claiming to be 4th generation, has miserably failed to prove the same, inasmuch as that neither original Intkab or pedigree table/Excerpt has been placed and proved on record and, therefore, the findings rendered by the Lower Appellate Court qua the character and nature of the property being ancestral are wholly misplaced, much less erroneous.

There is no force and merit in the plea of Mr.Bhardwaj that assuming for the sake of arguments, the property at the hands of Ram Parshad was self-acquired, then Hari Chand would not have a pre-existing right, would flow in case the nature of the property is ancestral, for, since the property at the hands of Ram Parshad was self-acquired, he had the different options to alienate or pass on the title either by way of

testamentary document, consent decree, relinquishment deed or gift deed in favour of any body other than his sons. Having given the share to his son, in my view, the son cannot be said to be having any pre-existing right.

As regards requirement of the registration of the consent decree, I am of the view that since Hari Chand, being the son of Ram Parshad, had already pre-existing right, therefore, the decree did not require any registration. Vis-a-vis to prove the character and nature of the property being ancestral, the property at the hands of Ram Parshad being self-acquired can be, at the best, treated as self-acquired property and, therefore, Ram Parshad, being owner of the property, had a right to deal with the same in the manner he wanted to. The aforementioned facts, on perusal of the judgment and decree, have not been noticed, much less appreciated. Thus, in my view, the findings rendered by both the Courts below are not sustainable in the eyes of law and the same are hereby set-aside. The question of law is answered in favour of the appellant-defendants and against the respondent-plaintiff. The suit is accordingly dismissed.

Appeal stands allowed.

April 26th, 2016
ramesh

(AMIT RAWAL)
JUDGE