

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

RSA No.2331 of 2011 (O&M)

Date of decision : 22.11.2016

Ajit Singh

...Appellant

Versus

Joginder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Vijay Lath, Advocate for the appellant.

Mr. H.K. Brinda, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by both the Courts below.

Mr. Vijay Lath, learned counsel appearing on behalf of appellant-plaintiff submits that Bishan Singh was the owner of the property. He was survived by four sons including Rattan Singh. Rattan Singh had died in the year 1981. The plaintiff is successor-in-interest of Rattan Singh. He along with his brother Joginder Singh had inherited his share. Shiv Kaur wife of Rattan Singh had 1/3rd share each. Mutation has been effected in favour of Shiv Kaur, plaintiff and Joginder Singh, whereas it should have been in a different manner as Shiv Kaur could not sell 1/3rd share to Harkanwar son of Joginder Singh who had acquired 2/3rd share. It is in this aspect of the matter, civil suit aforementioned was filed. In support of his contention, he relies upon Illustration (1)(b) of Para No.221 of Mulla's Hindu Law 21st Edition to contend that the property inherited from grandfather would be ancestral. In support of his contention, he has also relied upon ratio decidendi culled out

by Hon'ble Supreme Court in para No.12 of the judgment titled as *C.N. Arunachala Mudaliar Vs. C.A. Muruganatha Mudaliar and another*, AIR 1953 Supreme Court 495, to contend that a person can assert a equal share with father only when grandfather's property devolved upon his father would become ancestral in his hands and, therefore, the property at the hands of Rattan Singh was ancestral in nature as it had fallen to him from Bishan Singh. Bishan Singh though died prior to year 1947. In this regard, jamabandi for the year 1901-1902 has been placed on record. All these factors have not been taken into consideration and thus urges this Court for setting aside the judgment and decree under challenge.

Per Contra, Mr. H.K. Brinda, learned counsel appearing on behalf of respondents submits that appellant-plaintiff has failed to prove the nature and character of the property being ancestral. No pedigree table, or intkab has been placed on record. Even property at the hands of Rattan Singh would not be ancestral as fell to him from his father Bishan Singh. It would be the only son of the plaintiff who would have share by birth in the property. Concurrent findings of fact should not be interfered, until and unless there is gross illegality and perversity.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Vijay Lath, Advocate for the appellant.

As per para No.221 of 21st Edition of Hindu Law by Mulla, it has been held that person inheriting the property from his three immediate paternal ancestral hold it as coparcenary. The plaintiff, being third generation as he is claiming the right in the estate of Rattan Singh who had acquired

from Bishan Singh, cannot claim the property to be ancestral. Mutation had been effected in favour of three survivors of Rattan Singh namely plaintiff, Joginder Singh and Shiv Kaur widow of Rattan Singh.

In my view, plaintiff cannot have any grievance qua sanctioning of mutation *ibid*. Filing of the suit was nothing but an arm twisting, much less, an Act of greed. There is no dispute to the ratio decidendi culled out in the judgment cited at bar but as the facts of the case would reveals, the pith and substance of the judgment was whether son would have a right to claim or pre-empt his father from alienating his self-acquired property, answer was in “Negative”. Though in para No.5, there was reference whether the grandfather who had acquired property from the income of ancestral estate, would cloath the status of the property as ancestral but the facts and circumstances of each case has to be seen. However, in the instant case, no such evidence has been led to establish the nature and character of the property being ancestral.

I am of the view that plaintiff has miserably failed to prove the averments as culled out in the plaint.

Concurrent findings of fact is based upon preponderance of the evidence. I do not intend to differ with the same.

No ground for interference is made out, much less, no substantial questions of law arises for determination by this Court.

Accordingly, present appeal is dismissed.

22.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No