

220

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

RSA-1098-2012

Date of decision : 22.07.2016

Gurdeep Singh and others

... Appellant(s)

Versus

Gurcharan Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Goyal, Advocate
for the appellant(s).

Mr. Naveen Batra, Advocate
for the respondent(s).

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?

AMIT RAWAL, J. (ORAL)

The appellant(s)-plaintiff(s) is aggrieved of the judgment and decree rendered by both the Courts below whereby the claim qua consequential relief of possession on premise that the sale deed dated 03.07.2006 (Ex.D-1) executed by defendant No.1 in favour of defendant Nos.2 and 3 was illegal, null and void as the property at his hands was ancestral and therefore, it could not be sold except for legal necessity. The appellant(s)-plaintiff(s) is none else, but the minor children of defendant No.1-Gurcharan Singh, who instituted a suit through their mother, namely, Surinder Kaur as a natural guardian. Both the Courts below have non-suited the appellant(s)-plaintiff(s), after tendering the affidavit in examination-in-

chief as she had not appeared in the witness box.

Mr. Rajesh Goyal, learned counsel appearing on behalf of the appellant(s)-plaintiff(s) submits that the appellant(s)-plaintiff(s) is granted one opportunity to lead evidence as during the lower appellate stage, an application under Order 41 Rule 27 CPC seeking intervention of the Court for producing Sh. Vijay Kumar as witness was sought, but the same has erroneously been declined. The jamabandi, wanted to be placed on record, shows the nature and character of the property as ancestral, thus, urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

Mr. Naveen Batra, learned counsel appearing on behalf of the respondent(s)-defendant(s) submits that it was a self-acquired property of Gurcharan Singh as per the jamabandi for the year 2002-03. The sale deed is with regard to the half share. At the best, the defendant(s)-subsequent vendee(s) are the co-sharer. In case, the appellant(s)-plaintiff(s) are aggrieved of the joint-ness of the possession, he can always seek the partition of the property. No evidence qua the nature and character of the property being ancestral has been led and rightly so, the suit has been dismissed, thus, urges this Court for affirming the findings under challenge as no substantial questions of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and afraid that the argument of Mr. Rajesh Goyal is not able to cut an ice, much less, sans merit, for, even if, the proposed jamabandis for the year 2002-03 intended to be placed on record by way of additional evidence are seen, Ram Rakha, Preeto wd/o of Jeet Ram and Gurcharan

Singh had 1/4th, 7/4th and 1/2 share in the land. The sale deed dated 03.07.2006 is in respect of the half share, thus, the genesis of the suit based upon the ancestral property and not on other ground. In case, the appellant(s)-plaintiff(s) is not happy with joint-ness of the possession, he can always seek the partition of the property in accordance with law. In my view, the appellant(s)-plaintiff(s) has failed to prove the character and nature of the property as ancestral, rightly so, the application seeking additional evidence has been dismissed. Since, I have had a chance to examine the jamabandi handed over by Mr. Rajesh Goyal, during the course of the day, it would be a farcical exercise in allowing the additional evidence. The jamabandis sought to be placed on record does not *prima facie* prove the case of the appellant(s)-plaintiff(s).

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

22.07.2016
yogesh

(AMIT RAWAL)
JUDGE