

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

Date of Decision: February 01, 2016

1. **R.S.A.No.734 of 2012 (O&M)**

Gulzar Singh

...Appellant

Versus

Bawa Singh & others

...Respondents

2. **R.S.A.No.400 of 2014 (O&M)**

Balwant Singh

...Appellant

Versus

Gulzar Singh & others

...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.B.R.Mahajan, Senior Advocate with
Mr.Sharad Mehra, Advocate,
for the appellant in RSA No.734 of 2012 &
for respondent No.1 in RSA No.400 of 2014.

Mr.Premjit Kalia, Advocate,
for the appellant in RSA No.400 of 2014 &
for respondent No.1 in RSA No.734 of 2012.

AMIT RAWAL, J. (Oral)

CM No.905-C of 2014 in RSA No.400 of 2014

For the reasons mentioned in the application, which is
supported by an affidavit, delay of 107 days in re-filing the appeal is

condoned.

CM stands disposed of.

RSA Nos.374 of 2012 and 400 of 2014

By this order, I intend to dispose of two Regular Second Appeals bearing No.734 of 2012 and 400 of 2014 arising out of the filing of the two suit at the instance of the plaintiffs as the common questions of law and fact involved in both the appeals are the same. The facts are being taken from RSA No.734 of 2012.

RSA No.400 of 2014 is arising out of Civil Suit No.211 of 2007 (hereinafter referred "Suit No.1) and RSA No.734 of 2012 is arising out of Civil Suit No.17 of 2003 (hereinafter called "Suit No.2) filed at the instance of the plaintiffs vis-a-vis challenging two sale deeds executed on 23.9.1999 and 28.9.1999 by Dara Singh in favour of Bawa Singh and Balwant Singh for 29 kanals respectively. Second suit came to be decided on 29.7.2009. The first suit was decided on 18.2.2009, whereby the aforementioned sale deed was held to be null and void on the ground that the property had fallen from his grand-father and, thus, the property at the hands of the plaintiff, being 4th generation, was ancestral. The aforementioned finding came to be arrived at on the basis of documentary evidence, i.e., Ex.P1 to Ex.P10, which were tendered by the learned counsel vide statements dated 13.2.2008 and 2.6.2008. The aforementioned documents were not objected to by the defendants. The Court, on the basis of the appreciation of the aforementioned documents, found that the jamabandies were of the years 1926-27, 1936-37, 1960-61 and 1964-65, which showed that the property at the hands of Dara Singh was ancestral, in essence the plea of the defendants that the property at the hands of Dara

Singh was not ancestral, was declined. The appeal filed against the same was also dismissed and hence Regular Second Appeal No.400 of 2014 with a delay of 107 days in re-filing the same has been filed.

Vis-a-vis the second suit, the trial Court decreed the same vide judgment and decree dated 29.7.2009, but the Lower Appellate Court reversed the findings by holding that the plaintiff had only placed on record the Khatauni Ishtemal of one of the khasra number and not of others and, therefore, the character and nature of the property could not be connected to ancestral in nature.

Mr.B.R.Mahajan, learned Senior Counsel assisted by Mr.Sharad Mehra, learned counsel appearing on behalf of the appellant in RSA No.734 of 2012 submits that in Suit No.1, documentary evidence has been brought on record and producing of the excerpt would not be fatal as the aforementioned documents show that the property at the hands of Dara Singh was ancestral. The defendants have not objected to the documents on tendering. In the absence of excerpt, which is requirement of the High Court Rules and Orders, the Kanungo had to do only formality by referring the aforementioned document in the examination, thus, the plaintiff cannot be thrown out on this ground. The findings rendered by the Lower Appellate Court in Civil Suit No.2 had been noticed by the Lower Appellate Court in Civil Suit No.1 and it did not find any favour with it because it was only non-production of Khatauni Ishtemal of all the khasra numbers. Since the evidence in Civil Suit No.1 had been led in respect of all the khewats and, therefore, the character and nature of the property had been proved to be ancestral.

As regards the findings rendered by the Lower Appellate Court

in second suit, he submits that it has been proved on record that the property at the hands of Dara Singh was ancestral in nature and, therefore, there is illegality and perversity, much less, following substantial questions of law arise in RSA No.734 of 2012 for determination by this Court:-

“1. Whether in the facts and circumstances of the case, findings of the Additional District Judge that the plaintiff has failed to prove the suit property to be co-parcenary property are based on misreading and ignoring material evidence on record and, therefore, cannot be sustained?

2. Whether the judgment and decree passed by Additional District Judge suffers from perversity being contrary to evidence on record and settled principles of law and, therefore, unsustainable?

Mr.Premjit Kalia, learned counsel appearing on behalf of the appellant in RSA No.400 of 2014 submits that in the absence of the original excerpt by examination of the Kanungo, documentary evidence led on behalf of the plaintiff cannot be looked into evidence to prove the character and nature of the property as ancestral as the same is against the High Court Rules and Orders and as well as the judgment rendered in **Banta Singh and others Versus Phuman Singh and others, 1972 PLJ 275**. He further submits that the findings rendered by both the Courts below suffer from illegality and perversity and, therefore, substantial question of law arises for determination by this Court. He further submits that had the Kanungo been examined and produced the original excerpt, the defendants would have got opportunity to cross-examine him to check the genuinity and authenticity of the aforementioned document. In the absence of the discharge of the burden, first suit was liable to be dismissed and rightly so, the second suit had been dismissed by the Lower Appellate Court.

I have heard the learned counsel for the parties and appraised the paper book and am of the view that RSA No.400 of 2014 is liable to be dismissed, whereas RSA No.734 of 2012 is liable to be allowed for the following reasons:-

From the documentary evidence, referred to above, starting from 1926-27 till 1964-65, it is irresistibly concluded that the property at the hands of Dara Singh was ancestral in nature. The aforementioned documents have been tendered into evidence by the counsel vide statements dated 13.2.2008 and 2.6.2008 and on going through the record, there was no objection on behalf of the defendants. Both the Courts below examined all the documents and found that the character and nature of the property at the hands of Dara Singh was ancestral as it has fallen to him from Jawala Singh, to Jawala Singh from Daan Singh and to Daan Singh from Gurmukh Singh. Non-production of the Khatauni Ishtemal of the entire khewat in Suit No.2 would not be fatal, once I am deciding both the appeals together and can appreciate evidence examined in Suit No.1, which *ex-facie*, proves the nature and character of the property as ancestral. On going through all the documents, I am of the view that the defendants have failed to prove the property at the hands of Dara Singh being self-acquired property and accordingly the sale deed could not be executed. Even it could not be said to have been executed for discharge of legal necessity and rightly so, both the Courts below have set-aside the sale deed. Failure to produce the original excerpt in the peculiar facts and circumstances of the case, particularly when the aforementioned documents connect the khewat pre and post consolidation, the Courts below, *ex-facie*, found that the property at the hands of Dara Singh was ancestral in nature.

In view of what has been observed above, the questions of law framed in RSA No.734 of 2012 are answered in favour of the appellant-plaintiff, whereas the appeal filed on behalf of the defendant, i.e., RSA No.400 of 2014 is dismissed as no substantial question of law arises therein.

February 01, 2016
ramesh

(AMIT RAWAL)
JUDGE