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

**RSA-3316-2012 (O&M)
Date of decision : 10.05.2016**

Shangara Singh

... Appellant

Versus

Karnail Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.R. Mahajan, Senior Advocate with
Mr. Manpreet Ghumman, Advocate and
Mr. Prateek Mahajan, Advocate
for the appellant.

Mr. Vikas Bahl, Senior Advocate with
Mr. Narinder Kumar Vadehra, Advocate
for the respondents.

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-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit seeking declaration in respect of land measuring 328 kanals 6 marlas and as well as challenge to the sale deed executed by the respondent-defendant No.1 in favour of the grandson i.e. son of the plaintiff's brother, which was decreed by the trial Court, has been reversed.

Mr. B.R. Mahajan, learned Senior Counsel assisted by
Mr. Manpreet Ghumman and Mr. Prateek Mahajan, learned counsel appearing

on behalf of the appellant-plaintiff submits that Nadhana was the common ancestor, who was survived by son Jagtu and Defendant No.1-Shankar Singh got the property from Jagtu. The plaintiff being son of Shankar Singh has a right by birth and since, the property was ancestral in nature and therefore, Shankar Singh could not alienate the property except for legal necessity. The trial Court on the basis of the oral and documentary evidence by relying upon the jamabandi for the year 1910-11 (Ex.P-3) and 1939-40 (Ex.P-4) found that the property at the hands of Shankar Singh was ancestral and therefore, the plaintiff had a right by birth, however, the lower Appellate Court has reversed the finding by holding that Section 6 of the Hindu Succession Act came into force and the same should not be applicable. Shankar Singh had inherited the property from his father Jagtu Singh, thus, urges this Court to formulate the substantial questions of law as carved out in the memorandum of appeal.

Mr. Vikas Bahl, learned Senior Counsel assisted by Mr. Narinder Kumar Vadehra, learned counsel appearing on behalf of the respondent(s)-defendant(s) submits, that the plaintiff has to be 4th generation in lineage, in essence, the plaintiff has failed to prove that Jagtu got the land from Nadhana. The jamabandi is only with regard to the land owned by Jagtu. No ownership of the land of Nadhana has been proved on record and therefore, the plaintiff cannot be referred to as 4th generation in lineage, but was 3rd generation in lineage and therefore, cannot sustain the suit challenging the sale deed executed by defendant No.1 in favour of his grandson i.e. son of the plaintiff's brother, thus, urges this Court for affirming the findings rendered by the lower Appellate Court.

I have heard the learned counsel for the parties and appraised the

paper book and of the view that there is no force and substance in the plea of Mr. B.R. Mahajan, for, the plaintiff has miserably failed to prove that the property at the hands of Shankar Singh was inherited from Nadhana, common ancestor. Shankar Singh-defendant No.1 inherited from Jagtu and the plaintiff being 3rd generation in lineage cannot claim the right as per the explanation given in paragraph 221 of the Mulla's Hindu Law, 21st Edition. In my view, the view expressed by the lower Appellate Court holding that the property was not ancestral, is perfectly legal and justified, therefore, Shankar Singh could have alienated the property in the manner which he wants, in the absence of any evidence of the property being ancestral in nature.

There is another aspect of the matter having surfaced during the trial that the plaintiff had beaten his father-defendant No.1, who suffered injury on his head and got 14 stitches and such barbaric act of the son against his father, is not appreciated, much less, seriously condemned, owing to such act, plaintiff had audacity to claim right in property.

For the foregoing reasons, I do not intend to differ with the findings rendered by the lower Appellate Court which are based upon the appreciating of oral and documentary evidence, much less, no substantial question of law arises for determination.

With the aforesaid observations, the appeal stands dismissed.

10.05.2016
yogesh

(AMIT RAWAL)
JUDGE