

**CM No. 8918-C-2016 in/and
RSA No. 1094 of 2016**

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

**CM No. 8918-C-2016 in/and
RSA No. 1094 of 2016
Date of Decision: 26.07.2016**

Sohan Lal and others

.....Appellants

Vs.

Hukam Singh

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Mukesh Kumar Bhatnagar, Advocate,
for the appellants.

AMOL RATTAN SINGH, J. (ORAL)

CM No. 8918-C-2016

By this application, filed under Section 151, CPC, the applicants-appellants seek to place on record Jamabandies (Records of Rights) from the year 1966-67 till the year 1996-97, as also copies of a mutation register, to show that the suit land was actually ancestral land in the hands of appellant No. 1-defendant No. 1 Sohan Lal, it having been in the ownership of his forefather for at least three generations prior to him.

Vide an order of this Court dated 03.05.2016, the contention of learned counsel for the appellants had been noticed to the effect that he would cite law to show that simply on the basis of a mutation entry showing the property to have been

inherited, it would deemed to be sufficient proof, as contended, of the suit property being ancestral property. Subsequently, on 10.05.2016, the contention of learned counsel had been noticed that other than the mutation register produced as Ex. D3 before the learned Additional Civil Judge (Sr. Divn.) Hodal, the appellants had also applied for copies of jamabandies for the relevant years and would like to move an appropriate application to bring them on record. While adjourning the case, it had specifically noticed in that order that no comment was being made on the maintainability of any such application.

2. Today consequently, an application under Section 151 CPC has been filed. Obviously, in any case no such application is entertainable under Section 151 CPC, unless the documents sought to be now led by way of evidence, are accompanied by an application for leading additional evidence under Order 41 Rule 27 CPC. Of course, the maintainability of such an application at the stage of second appeal would still be another issue to be looked at, if any such application had been moved.

Consequently, the application not being maintainable as would also be seen from the order passed in the main appeal, it is dismissed.

RSA No. 1094 of 2016

1. The respondent-plaintiff had filed a suit for specific performance of an agreement to sell dated 06.06.2006, entered into by appellant No. 1 with him, in respect of the suit land measuring 13 kanals and 01 marla for a consideration amount of

Rs. 34,50,000/-, out of which Rs. 6,10,000/- was paid by way of earnest money, with the date for execution of the sale deed being set as 06.05.2007, i.e. 11 months later.

2. However, instead of executing the sale deed, appellant No. 1 suffered a relinquishment deed in favour of appellants No. 2 and 3, i.e. his sons, for the entire suit land on 16.05.2007, i.e. 10 days after the last date fixed for execution of the sale deed. Before the learned Civil Judge, a plea was raised that the suit property was ancestral in nature, though as specifically held by that Court, no evidence whatsoever was led to prove the said fact (of the land being ancestral and co-parcenary property).

5. Eventually holding that it had been proved that the respondent-plaintiff had been willing to execute the sale deed but the appellant-defendant No. 1 did not turn up in the office of the Sub-Registrar to execute his part of the contract, and that his intention to not alienate the suit land in terms of the agreement, was obvious from the fact that 10 days after the date fixed for execution of the sale deed, he had suffered a relinquishment deed in favour of his sons, the suit was decreed in favour of the respondent-plaintiff.

6. In the first appeal filed by the present appellants before the learned Additional District Judge, Palwal, again no plea was taken that the suit land was ancestral co-parcenary property.

Consequently, that part has not even been noticed in the judgment of the learned lower appellate Court.

7. Before this Court, learned counsel has based his arguments entirely on the issue that such property being ancestral and coparcenary in the hands of appellant No. 1, in fact he could not have entered into an agreement to sell it to the respondent-plaintiff and that the rights of his sons, i.e. appellants No. 2 and 3, were trampled upon by the agreement and eventually even by the judgments and decrees of the Courts below, in favour of the respondent, directing that upon payment of the consideration amount, the sale deed be executed in his favour.

8. Having considered the aforesaid arguments, seeing that admittedly no evidence was led before the Courts below, other than Ex. D3 which is stated to be a copy of a mutation register by which the suit land was transferred in favour of the appellant No. 1 after the death of his father, it cannot be held that simply on the basis of a single transfer from father to son, it would prove the suit property to be ancestral coparcenary property.

9. Hence, with no other evidence having been led to prove to such contention, and with not even a plea having been raised to that effect before the lower appellate Court, I find no ground to entertain this second appeal on the aforesaid ground, where otherwise the findings of the Courts below, on the merits of the case, are not found to be erroneous in any manner whatsoever.

10. Having held as above, thereafter, the not so bonafide

intention of the appellants-defendants becomes all the more clear from the fact that, after entering into an agreement with the plaintiff on 06.06.2006, fixing the date of execution of the sale deed to be 06.05.2007, within ten days of that stipulated date, on 16.05.2007, appellant No.1 suffered a relinquishment deed in favour of appellants No.2 and 3, instead of honouring the contract entered into by him, with the respondent-plaintiff.

11. Consequently, finding no merit in this appeal, it is dismissed in *limine*, but with no orders as to costs.

**(AMOL RATTAN SINGH)
JUDGE**

July 26, 2016
nitin/dinesh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No.