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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3443-2013 (O&M)
Date of decision : 31.08.2016

Mukesh and others

... Appellants

Versus

Rajwati @ Rajwanti and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.R. Yadav, Advocate
for the appellants.

Mr. Anil Kumar Rana, Advocate
for respondent No.1.

Mr. Virendra Rana, Advocate
for respondent Nos.2 and 3.

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)

CM-2168-C-2014

Prayer in the application under Order 22 Rule 10 CPC read with Section 151 CPC for impleading the applicants as respondent Nos.2 and 3.

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the applicants are impleaded as respondent Nos.2 and 3.

CM stands disposed of.

RSA-3443-2013

findings of the fact, whereby the suit seeking declaration with consequential relief of permanent injunction has been decreed by both the Courts below.

Mr. P.R. Yadav, learned counsel appearing on behalf of the appellants-defendants submits that the suit for declaration with consequential relief of permanent injunction was not maintainable as the property at the hands of Pehlad Singh was ancestral in view of the embargo under Section 6 of the Hindu Succession Act, 1956 (hereinafter called 'the 1956 Act') as Pehlad Singh died on 23.04.1970 and the amendment caused only in the year 2005. The character and nature of the property was ancestral. He submits that a categorical averment was made in the written statement qua the nature and character of the property as ancestral and there was no replication. In support of his contentions, he relies upon the provisions of Order 8 Rule 5 of the Code of Civil Procedure.

He further submits that once for all intents and purposes, the nature and character of the property as ancestral has been proved, therefore, there was no need to lead any evidence. It is, in this background of the matter, the appellants-defendants cannot bring on record the evidence. Pedigree table handed over by the learned counsel for the appellants-defendants, during the course of the arguments shows that the property at the hands of Pehlad Singh had fallen from his forefather i.e. Nathan and therefore, the appellants-defendants being 4th generation in lineage would have right by birth and the daughters till the amendment in Section 6 of the 1956 Act, did not have any right. This aspect has totally been ignored by both the Courts below, thus, urges this Court for setting aside the findings under challenge and prays for formulation of the substantial questions of

law as culled out in the memorandum of appeal.

Mr. Anil Kumar Rana and Mr. Virendra Rana, learned counsel appearing on behalf of respondent No.1 and respondent Nos.2 & 3, respectively, submits that the appellants-defendants miserably failed to prove the character and nature of the property as ancestral, rightly so, the Courts below found that it was a self-acquired property so Pehlad Singh deemed to have died intestate, therefore, the property as per the natural succession would devolve upon all the legal heirs. The concurrent findings cannot be interfered until and unless there is a gross illegality and perversity, thus, urges this Court for affirming the findings under challenge as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. P.R. Yadav, as the appellants-defendants have failed to lead evidence with regard to the nature and character of the property as ancestral. Had it been so, perhaps there would have been a force in the submissions of Mr. P.R. Yadav, as amendment caused in Section 6 of the 1956 Act in 2005 and daughters would not have any right in the coparcenary property. Having failed to prove the nature and character of the property as ancestral, I am of the view that Pehlad Singh died intestate and therefore, his property would devolve upon all the legal heirs by way of natural succession. All these facts have been noticed by both the Courts below while decreeing the suit.

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.

With the aforesaid observations, the appeal is dismissed.

31.08.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No