

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3673 of 2013(O&M)
Date of decision : April 28, 2016

Kulwant singh

..... Appellant

Versus

Harbhajan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. S. Dadwal , Advocate
for the appellant.

Mr. Puneet Sharma, Advocate
for respondent No.1 and 2.

Mr. Narinder Singh Swaitch, Advocate
for respondent No.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).

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking declaration/joint possession in respect of suit property on the ground that the property at the hands of respondent-defendant No.1 namely Harbhajan Singh, father was co-parcenary and ancestral in nature.

However, against the judgment and decree of the trial court, both the parties were aggrieved and the same was assailed and appeal and cross appeal was filed. The lower appellate

court partly accepted the cross-appeal filed at the instance of the respondents for grant of injunction, in essence judgment and decree of the trial court was reversed qua injunction.

Mr. R. S. Dadwal, learned counsel appearing on behalf of the appellant submits that there was categoric admission of the respondents-defendants qua nature and character of the property being ancestral. The aforementioned evidence is sufficient to clothe the status of the property being ancestral in nature, and therefore the sale deed executed by Harbhajan Singh qua the same portion of the property could not have been executed except for legal necessity. After noticing all these factors, the trial court partly decreed the suit but the lower appellate court reversed the finding which is totally based on conjectures and surmises which are neither here nor there. The appellant was not required to lead any evidence oral or documentary in view of admission, thus urges this Court to formulate substantial questions of law as carved out in the Memorandum of Appeal.

Mr. Puneet Sharma, learned counsel appearing on behalf of respondent No.1 and 2 submits that the plaintiff has to stand on his own legs. No evidence has been lead to discharge the onus as enshrined under Section 101 of Indian Evidence Act, 1872. No Excerpt much less pedigree table has been brought on record to show that the property at the hands of Sudagar Singh which has fallen to Harbhajan Singh being great grand father being 4th generation has a right by birth, thus urges this Court for affirming the judgment and decree of the lower appellate court by reversing the

finding qua injunction granted by the trial court.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and substance in the plea of learned counsel for the appellant, for, neither any Excerpt or pedigree table has been brought on record. The High Court Rules and Orders have been interpreted by this Court in **Banta Singh & others Vs. Phuman Singh and others 1972 PLJ 275** but the same have not been complied. The person being fourth generation in lineage can assert right by birth. Three generation preceding to the person are required to succeed the property. Having failed to lead such evidence, I am of the view that the appellant-plaintiff has failed to discharge the onus. Mere admission in the cross-examination would not dispense with discharging the onus regarding nature and character of the property.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

April 28 , 2016
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