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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4938-2013 (O&M)
Date of decision : 24.05.2016

Raj Kumar and others

... Appellants

Versus

Dasondhi Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Dinarpur, Advocate
for the appellants.

Mr. Sanjay Verma, Advocate
for respondent No.1.

Mr. C.B. Goel, Advocate
for respondent Nos.2 to 6.

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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(s)-plaintiff(s) is aggrieved of the dismissal of the suit seeking declaration to the effect that he is the owner in possession of the half share in the land described in the head note of the suit and also sought setting aside of the judgment and decree dated 26.07.1993 passed in ***Civil Suit No.516 of 1993*** titled as ***"Joginder Singh etc. Vs Nanak"*** in respect of half share and judgment and decree dated 07.03.1998 passed in ***Civil Suit No.239-C of 1997*** titled as ***"Joginder Singh and others V/s Nanak"*** on the ground that the property at the hand of Nanak was ancestral.

Mr. S.S. Dinarpur, learned counsel appearing on behalf of the

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appellant(s)-plaintiff(s) submits, that in the aforementioned suit, there is a categoric pleading that the property owned by Nanak was ancestral and resultantly creating interest and right in the property for the first time in favour of defendant No.1 and his children was not permissible in law. Even the defendant(s) have also propounded a Will dated 29.08.1997. The Courts below non-suited the appellant(s)-plaintiff(s) on the ground that the suit in the year 1997 was barred by law of limitation. The admission in the previous litigation qua nature and character of the property as ancestral, proved on record and yet the Courts below committed illegality and perversity in declining the relief as the appellant(s)-plaintiff(s) has a right in the property by birth, thus, urges this Court for setting of the judgment and decree and prays for formulation of the substantial questions of law as drawn in the memorandum of appeal.

Mr. C.B. Goel, learned counsel appearing on behalf of respondent Nos.2 to 6 submits, that appellant(s)-plaintiff(s) has failed to prove on record the original excerpt and pedigree table to show that the property at the hands of Nanak was ancestral. Mere admission in the previous litigation would not clothe the nature and character of the property as ancestral, much less, pleading of self-acquired property in the co-parcenary property without any evidence to the contrary. He further submits that the brother of Nanak and their uncle also owned the property by virtue of the sale deed dated 20.10.1968. He was issueless, therefore, the entire property was divided amongst the plaintiff and the defendant No.1. Even otherwise, the admission of the plaintiff is that he had living away from his father and thus, he had already severed relation from his father. The

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concurrent findings of fact cannot be interfered until and unless substantial question of law arises for determination and prays for affirming the findings, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal, for, the appellant(s)-plaintiff(s) has failed to prove on record the following documentary evidence to establish the character and nature of the property as ancestral:-

1) Original Excerpt

2) Pedigree Table

Mere admission in the earlier suit would not clothe the nature and character of the property as ancestral. It is not a pleaded case that Nanak had blended his self-acquired property in the co-parcenary property. In the absence of the aforementioned evidence, it is irresistible concluded that the property owned by Nanak was self-acquired. It is categoric case of the plaintiff(s) that Nanak along with his brother purchased the property vide sale deed dated 20.10.1968. No explanation has come forth in not challenging the decree of 1993 in the year 1998. Even the Will propounded by the defendant(s) has been proved through the testimony of Ramji Lal, the witness and Yash Pal Rajheri, Advocate, another witness of the Will. The ingredients of Sections 68 of the Indian Evidence Act and 63 (c) of the Indian Succession Act have been proved, much less, complied with. Having failed to prove the character and nature of the property as ancestral, I am of the view that Nanak having dealt with property being the owner in possession and the appellant(s)-plaintiff(s) cannot not claim right by birth in

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the property.

For the foregoing reasons, no ground is made out for interference in the judgment and decree which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the judgment and decree of the Courts below are affirmed.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

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