

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

RSA No.5063 of 2013 (O&M)

Date of decision:11.08.2016

Braham Dutt and others

... Appellants

Vs.

Dharampal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikram Singh, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

Appellant-plaintiffs are aggrieved of the concurrent findings of facts and law, whereby, claim in the suit seeking declaration, joint possession and consequential relief of permanent injunction challenging the decree dated 07.06.1971, has been declined by both the Courts below.

Mr. Vikram Singh, learned counsel appearing on behalf of the appellant-plaintiffs submits that Banshi, deceased ancestor of the plaintiffs inherited the property from his father-Har Gobind. There was a family settlement in the year 1971 amongst the children of Banshi, i.e., plaintiffs and defendants. Banshi had five sons. The settlement ultimately got the stamp of the Court vide judgment and decree dated 07.06.1971, by virtue of which

everyone got 1/6th share in the property. Two brothers, i.e., Ramphal and Babu Ram filed a suit against the father regarding their 1/6th share and got the same in their favour. Once the property was ancestral at the hand of Bansi, he could not have bequeathed his share against the interest of the plaintiffs. This aspect has not been noticed by both the Courts below. The property at the hands of Bansi was ancestral and he could not have suffered the exclusive decree.

I have heard learned counsel for the appellants and appraised the judgments and decrees of the Courts below.

The judgment and decree dated 07.06.1971 is qua 1/6th share of Bansi. The plaintiffs have miserably failed to prove the nature and character of the property being ancestral. If it is so, they could not have got the share by way of family settlement between themselves and Bansi. Since 1/6th share of Bansi is self acquired property, he could have bequeathed his title or transfer the same in any manner, he wanted to. The decree dated 07.06.1971 is with regard to divesting of suit land qua 1/6th share in favour of defendants. The plaintiffs cannot have an eye on the property as it is self acquired property. The owner of the property acquired the same through his own dint and hard work. He can use the property in any manner he wants to do.

In view of the aforementioned observations, 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 adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

August 11, 2016

savita

(AMIT RAWAL)
JUDGE

Wheather speaking/reasoned

Whether Reportable

Yes/No
Yes/No