

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

RSA-1704 of 2015 (O&M)

Date of decision: 01.02.2016

Naseeb Singh and another

...Appellants

Versus

Bhoop Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Naveen Kumar, Advocate
for the appellants.

Jitendra Chauhan, J. (Oral)

The plaintiffs/appellants filed suit for declaration with consequential relief of permanent injunction. The trial Court vide judgment and decree dated 23.01.2012, dismissed the suit.

2. Aggrieved against the findings of trial Court, the plaintiffs/appellants filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 12.12.2014.

3. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the

oral as well as documentary evidence on record, hence, the instant appeal at the behest of the plaintiffs/appellants.

4. Brief facts of the case are that Sahi Ram was the common ancestor of the plaintiffs and defendant No.1 and formed a Joint Hindu Family. Defendant No.1 inherited the suit land from his ancestors and the same was ancestral in nature in the hands of Bhoop Singh, defendant No.1. The land in question was a coparcenary property in which plaintiffs and defendant No.1 have right by birth. The land in the hands of Gohli son of Ram Chand was ancestral and he was the owner in possession of agricultural land comprised in khewat No.137/101 khatoni No.201, measuring 54 kanals and 17 marlas. After the death of Gohli, who was the karta of the family, defendant No.1 got 1/5th share in the suit land which is ancestral and coparcenary property in which the plaintiffs have right by birth. Defendant No.1 sold 8 kanals of coparcenary property to defendant No.2 vide sale deed No.180 dated 27.04.2007. Defendant No.1 was the only owner of 1/3rd share in 8 kanals of land and he could transfer his share only to the extent of 2 kanals 13 marlas, therefore, he could not sold the land beyond his share. Hence, the suit was filed on behalf of the plaintiffs, which was

dismissed as mentioned above. Hence, the present appeal has been filed to determine whether the plaintiffs are entitled for declaration to the effect that alleged sale deed No.180 dated 27.04.2007 is null and void qua the shares of the plaintiffs.

5. The precise question for determination is that as to whether the property in dispute is ancestral in the hands of plaintiffs and that sale dated 27.04.2007, Ex.PW1/A is imperative qua the share of the plaintiffs.

6. It is contended by learned counsel for the appellants that both the Courts below have gravely erred in not considering the revenue record placed before the Courts below which clearly demonstrate that the suit land was ancestral and the plaintiffs have the equal right over the same. The defendant No.1 was only owner of 1/3rd share in 8 kanals of land and he has no right to transfer the share of the appellants. The plaintiffs are the absolute owners of the property in dispute being ancestral property. In support of his contentions, the learned counsel cites **Rohit Chauhan Vs. Surinder Singh and others**, 2013(9) SCC 419 and **Jai Narain Vs. Smt. Sona Devi**, 2006(2) RCR (Civil) 213.

7. I have heard the contentions of learned counsel for

the appellants.

8. The Court has perused the entire record. The witnesses produced by the plaintiffs in support of their claim themselves admitted that the land had been already partitioned. The plaintiff No.1 had also admitted that he had been separated by his father in the year 1991 and since then he had been residing separately from his father. No document had been brought on record before the Courts below to substantiate that the land in question is ancestral one or the plaintiffs are in possession over the property in dispute. The suit had been filed for declaration with consequential relief of permanent injunction and no relief of possession had been sought by the plaintiffs. PW-3 Shanti had duly admitted that defendant No.2 is in the cultivating possession of the suit land. Thus, the plaintiffs/appellants have miserably failed to prove their case before the Courts below, therefore, in the given facts and circumstances of the case, this Court is of the opinion that both the Courts below have rightly dealt with the issues in the right perspective. There are concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the

evidence produced by the parties. This Court finds that the contentions have no merit as they only relate to the appreciation of evidence. Neither any evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. In

Kashmir Singh Vs. Harnam Singh and another, 2008(2) RCR

(Civil) 688, it has been held as under:-

“17. The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

9. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. The case law cited by the learned counsel is distinguishable on the facts and will not apply in the present case. Hence, no interference is called for.

Dismissed.

01.02.2016

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(JITENDRA CHAUHAN)
JUDGE