

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

RSA No.2298 of 2014

Date of Decision.18.10.2016

Lachhman Singh

.....Appellant

Vs

Balbir Singh and others

.....Respondents

Present: Mr. H.R.Bhardwaj, Advocate for
Mr. J.S. Brar, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact rendered by the Courts below whereby the suit seeking declaration, joint possession and in alternative for partition, has been dismissed on the ground that the property at the hands of the defendant Nos.2 and 3 vide transfer deed dated 31.03.2005 executed by defendant No.1 in their favour, being not ancestral property.

Mr. H.R. Bhardwaj, Advocate for Mr. J.S. Brar, Advocate learned counsel appearing for the appellant-plaintiff submits, that the land mentioned in the transfer deed was ancestral/coparcenary property as it had fallen to defendant No.1-Balbir Singh from Phuman Singh and Sher Singh and therefore, the appellant-plaintiff as 4th generation has coparcenary right in the property. The Courts below have committed illegality and perversity by holding the property at the hands of Balbir Singh to be self-acquired but it is only 25 kanals 18 marlas of land which was purchased by defendant No.1 vide sale deed dated 08.04.1975. The jamabandies for the year 1946-47 and afterwards have also been brought on record to prove the

aforementioned fact. All these facts have not been noticed by the Courts below, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submission of counsel appearing for the appellant-plaintiff, for, in order to establish the nature of property as ancestral, the appellant-plaintiff has to prove that the property of Sher Singh had fallen to Phuman Singh and thereafter to Balbir Singh and the appellant-plaintiff being 4th generation in lineage. In the jamabandies from the 1966-67 onwards, Balbir Singh is recorded as owner but the appellant-plaintiff has not been able to discharge the onus that the property in dispute has been inherited by Balbir Singh from his father Phuman Singh and by Phuman Singh from his father Sher Singh. In the absence of the same, it cannot be inferred that the property devolved amongst three generations in lineage, thus, plaintiff cannot claim, being the 4th generation, right by birth in view of para 221 of 21st Edition of Hindu Law by Mulla.

Even no evidence had been led that the property measuring 25 kanals 18 marlas was purchased by defendant No.1-Balbir Singh from the joint proceeds of the property, thus, assumes character as ancestral. In my view, the appellant-plaintiff has miserably failed to discharge the onus, regarding the nature of the property as per the ratio decidendi culled out by the judgment of this Court in **Banta Singh and others vs. Phuman Singh and others 1972 PLJ 275.**

For the foregoing reasons, I do not intend to differ with the

findings rendered by the Courts below which are based upon correct appreciation of fact and law, much less, no substantial question of law arises for consideration in the second appeal. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 18, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No