

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

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1. Regular Second Appeal No.2873 of 2014 (O&M)
Date of Decision: January 25, 2016

Rishipal

...Appellant

Versus

Satbir and another

...Respondents

2. Regular Second Appeal No.3106 of 2014 (O&M)

Rishipal

...Appellant

Versus

Satbir and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Sarju Puri, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J.

By this order, I propose to decide two Regular Second Appeals, as per the request of the counsel for the appellant, i.e. RSA Nos.2873 and 3106 of 2014 both titled as *Rishipal Versus Satbir and another*, as almost common questions of facts are involved and the legal issue is the same.

In RSA No.2873 of 2014, the suit has been preferred by the appellant-plaintiff, who is son of respondent-defendant No.1-Gopal, who had filed suit No.039/2006/2012 on 27.05.2006 praying for a decree of declaration to the effect that the sale deed registered by Vasika No.4041 dated 30.12.2005 executed by respondent-defendant No.1-Gopal his father in favour of respondent No.2-Smt. Sarla Devi wife of Ram Singh, is illegal, null and void and inoperative as the land which was sold measuring 11 kanals and 6 marlas, situated in revenue estate of village Bhirawati, Tehsil Nuh, is not binding upon the reversionary rights of the

appellant-plaintiff being an ancestral property and was sold without legal necessity, which has been dismissed by the Civil Judge (Senior Division), Nuh, on 21.08.2013, appeal against which preferred by the appellant-plaintiff i.e. Civil Appeal No.112 of 19.09.2013 has also been dismissed by the District Judge, Nuh, on 20.01.2014.

In RSA No.3106 of 2014, the appellant-plaintiff has challenged the relinquishment deed bearing Vasika No.2648 dated 26.09.2005 executed by respondent-defendant No.1-Gopal, father of the appellant, in favour of Smt. Ramkala (sister-in-law of the appellant-plaintiff) wife of Satbir, whereby allegedly the ancestral land measuring 8 kanals 11 marlas situated in revenue estate of village Manuwas, Tehsil Nuh, District Mewat, has been relinquished, by filing Civil Suit No.747 of 2005 dated 21.12.2005, which has been dismissed by the Civil Judge (Senior Division), Nuh, on 24.08.2013, appeal against which preferred by the appellant-plaintiff i.e. Civil Appeal No.111 of 19.09.2013 has been dismissed by the District Judge, Nuh, on 20.01.2014.

It is the contention of learned counsel for the appellant that the sale of the ancestral land by sale deed dated 26.04.1978 in favour of Sarla Devi wife of Ram Singh and similarly the relinquishment deed bearing Vasika No.2648 dated 26.09.2005, cannot sustain as the ancestral land could neither have been sold or relinquishment deed executed by respondent-defendant No.1-Gopal without legal necessity. He contends that as per the pleadings and the evidence brought on record, it has been duly established that the land at the hands of Gopal was ancestral and as per the custom prevalent in District Mewat in Haryana State, a Hindu by caste or an agriculturist can alienate the ancestral land by way of sale, mortgage and

lease etc. only with the consent of the male collateral and nearest reversionaries only. The appellant-plaintiff is admittedly the son of respondent-defendant No.1-Gopal and thus, he is the nearest collateral and reversionary well within five degrees. Respondent-defendant No.1-Gopal under the influence of his other son Satbir husband of Ramkala has illegally and unlawfully got executed the sale deed and the relinquishment deed knowing fully well that it was an ancestral land which has come in the hands of Gopal from his forefathers and, therefore, the said sale deed and the relinquishment deed deserve to be set aside as it goes against the statutory law and the custom prevalent in District Mewat in State of Haryana. Prayer has, thus, been made for setting aside the impugned judgments and decreeing the suit of the appellant-plaintiff.

I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments.

The question on which the decision of both the cases hinges is whether the land at the hands of respondent-defendant No.1-Gopal was ancestral coparcenary property or self-acquired?

Going by the pleadings of the appellant-plaintiff, it has been stated that the property delved upon Gopal through his father Malha, who further got this property from his father but no evidence has been brought on record to prove the same. The cross-examination of the witnesses, who had appeared on behalf of the plaintiff, demolishes the case of the appellant-plaintiff. The appellant-plaintiff appeared as PW-1 and admitted that the land was purchased in the year 1965 by his grandfather Malha which is totally contradictory to the pleadings in the plaint and the examination-in-

chief, where he has stated that Malha got the property from his ancestors. He further admitted that before the purchase of the land, brothers of his grandfather Malha, had separated and even father of the appellant-plaintiff i.e. Gopal had also separated from his brothers. The land in dispute, therefore, cannot be said to be ancestral coparcenary property. In the written statement, it has been a categorical stand of Gopal that he had purchased the land in the year 1965 which claim in the light of the cross-examination, stands by and large admitted. Omwati, in her cross-examination, admitted that the property was purchased by his father and stated that she did not know anything what was mentioned in her affidavit Exhibit P3/A (examination-in-chief). She admitted that after the death of their mother, his father Gopal was residing with Satbir and Ramkala-respondent No.2, who were looking after him. All this evidence goes to show that the property is not coparcenary nor has anything come on record which would indicate that Malha had purchased the property in the name of Gopal out of the funds of Hindu undivided family but that in any case, is not possible as it has been admitted in the cross-examination by the appellant-plaintiff that prior to the purchase of the suit property in the year 1965, Malha (grandfather) had separated from his brothers and in fact, Gopal had also separated from his brothers prior to the said purchase. There is no evidence on record which would establish that the land in dispute was ancestral coparcenary property.

The findings, thus, recorded by the Courts below that the suit property in dispute is not a coparcenary property but self-acquired, cannot be faulted with as there is no presumption in favour of ancestral property, especially when the same is denied by the respondents-defendants. Even an

admission of a party may not be enough to hold that the property is ancestral or coparcenary as to the proof of the nature of the property. There has to be evidence on record for the Court to come to a conclusion that the property is coparcenary and in the absence thereof, the presumption is otherwise i.e. the property is self-acquired.

No other point has been raised or argued by the counsel for the appellant.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeals. Therefore, finding no merit in the appeals, the same stand dismissed.

In the light of the dismissal of both the appeals, the applications for stay i.e. CM Nos.6825-C and 7349-C of 2014, stand disposed of as infructuous.

January 25, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE