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

**CM No.-7177-C-2014 in/and
RSA-3012-2014 (O&M) &
Cross objection No. 23-C-2015
Date of decision : 14.01.2016**

Chain Singh

...Appellant

Versus

Rajender and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.C. Malik, Advocate
for the applicant/appellant.

Mr. Deepak Kundu, Advocate
for respondent Nos.1 to 4.

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 appeal stands admitted, however, being time and again taken up in motion hearing kept for adjudication of the application seeking stay of the judgment and decree of the lower Appellate Court.

With the consent of learned counsel representing the parties, the appeal is taken on board.

This order of mine shall dispose of the cross objection No. 23-C of 2015 and the appeal bearing No.3012 of 2014.

The appellant-plaintiff is aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit, filed by the appellant-plaintiff, though decreed by the trial Court, has been dismissed.

Mr. J.C. Malik, learned counsel appearing on behalf of the appellant-plaintiff submits that the suit for declaration challenging the Will dated 23.01.1998 executed by Bhoop Singh who died on 15.08.2005 was filed. The property at the hands of Bhoop Singh was ancestral, and therefore, the appellant-plaintiff had a 1/5th share by birth. The beneficiary of the Will is none else, but the nephew-(son of the brother of the appellant-plaintiff). The aforementioned suit was filed on 18.11.2006 after having acquired the fact that the respondents-defendants have set a Will and on that mutation has erroneously been entered. The Will dated 23.01.1998 has not been proved in accordance with law, in essence, the provisions of Section 68 of the Indian Evidence Act has not been complied with. Thus, the substantial question of law arises for determination of this Court.

He further submits that in cross-examination, the respondents-defendants admitted the nature of the property as being ancestral, though in the written statement, the nature and character of the property as ancestral was seriously disputed. The trial Court though did not frame the issue of property being

ancestral, yet found that the Will was surrounded by suspicious circumstances, much less, not proved by the respondents-defendants and accordingly, the suit has rightly been decreed. The lower Appellate Court has committed illegality and perversity in allowing the appeal by holding that the appellant-plaintiff has not able to prove the ingredients of fraud.

Mr. Deepak Kundu, learned counsel appearing on behalf of the respondents-defendants and cross-objectors, submits that the tenor and mode of the judgment and decree reveals that the entire focus of the Court was on Will whereas plaintiff was required to prove as to whether property was ancestral or not, in essence, the trial Court has not even adverted to the averments made in the plaint. The aforementioned Will bears the thumb impressions of the appellant-plaintiff. The Will is of the year 1998 and ingredients of fraud have not proved much less, discharged, even till the date of the death of the father, much less, thereafter, thus, there is no illegality or any perversity. In support of the cross-objection, he submits that one of the attesting witnesses had died, its death certificate could not be placed on record and, therefore, an application in regard by way of additional evidence was filed which has erroneously been dismissed, and therefore, the necessity of filing the cross-objections.

I have heard the learned counsel for the parties and appraised the paper book and I am of the view that the appeal is liable to be dismissed for the following reasons:

The trial Court on the basis of pleadings of the parties framed the following issues:-

1. Whether the plaintiff is owner in possession of agricultural land, as detailed and described in the head note of the plaint?OPP
2. Whether the Will dated 23.01.1998 is illegal, null and void and not binding on the rights of the plaintiff, as alleged in the plaint?OPP
3. In case issue Nos.1 and 2 are proved in affirmative, then whether the plaintiff is entitled to the relief of permanent injunction, as alleged in the plaint?OPP
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the plaintiff has not come to the Court with clean hands? OPD
6. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
7. Whether the suit is time barred? OPD
8. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
9. Relief.

The onus to prove the issue No.1 was on the appellant-plaintiff. It is a comprehensive issue which also include the proving of the nature and character of the land being ancestral at the hands of Bhoop Singh. No kursinama or excerpt (pedigree table) has been produced on record except the Jamabandi for the year 2003-04, which does not reflect the property at the hands of Bhoop Singh, being ancestral. In essence, the property at the hands of Bhoop Singh fallen from the two generations and therefor appellant-plaintiff cannot claim right by birth and supported by the judgment

laid down by this Court, **1972 PLJ 275 "Banta Singh & others Vs. Phuman Singh & others" 725**, whereby the procedure has been prescribed for proving the nature of the property being ancestral, in essence, original excerpt has to be proved on record to show that the entire property was ancestral in nature. In my view, the appellant-plaintiff has failed to discharge the onus, viz-a-viz, the property being ancestral at the hands of Bhoop Singh. A categoric stand has been taken in the written statement that the entire property was self-acquired. The Will is of the year 1998 and the plaintiff remained silent for almost eight years and few months, despite the fact that he is the witness to the Will. The appellant-plaintiff has also failed to prove the ingredients of Order 6 Rule 4 of the Code of Civil Procedure which is essential and necessary requirement of law to corroborate the averments, viz-a-viz, the fraud and mis-appreciation. Mere admissions in the cross-examination, would not change the nature and character of the property being ancestral.

The lower Appellate Court has rightly reversed the findings of the trial Court, whereby the aforementioned suit was decreed. In view of what has been discussed above, the substantial question of law, as noticed above, is answered in favour of the respondents-defendants and against the appellant-plaintiff.

Since, I have already held that the property at the hands of Bhoop Singh being not ancestral, the cross-objection having been filed in declining the application seeking additional evidence would

be meaningless and is also dismissed. In essence, the suit filed by the appellant-plaintiff stands dismissed and the Will dated 23.01.1998 is upheld.

Accordingly, the appeal as well as the cross-objection is dismissed.

14.01.2016
yogesh

(AMIT RAWAL)
JUDGE