

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

**R.S.A No.6270 of 2015 (O&M)  
Date of decision :16.02.2016**

**Rattan Singh**

**..... Appellant**

**Versus**

**Hardeep Singh and another**

**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr.R.P.S.Rana, Advocate  
for the appellant.

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**DARSHAN SINGH,J**

The present appeal has been preferred against the judgment and decree dated 10.08.2015 passed by the learned Additional District Judge, Jalandhar, vide which the appeal preferred against the judgment and decree dated 06.03.2014, passed by the learned Civil Judge (Jr. Division), Jalandhar, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The appellant-plaintiff has filed the suit for grant of a decree of declaration to the effect that he and defendants are joint owners to the extent of 1/ 3<sup>rd</sup> share each in the ancestral land measuring 10 acres 3 kanals 18 marlas situated at village Talhan, Tehsil and District Jalandhar detailed and described in the head note of the plaint. He also sought the consequential relief of permanent injunction restraining the respondent-defendant no.1 from changing the nature of the suit property and also

from alienating the same in any manner.

4. As per averments in the plaint, the land in dispute was ancestral one in the hands of Jarnail Singh, the grandfather of the parties. The said land came to Jarnail Singh from his forefathers. He was having only one son namely Surjit Singh i.e. father of the parties, who unfortunately died on 28.12.2001 i.e. before the death of Jarnail Singh, who died on 26.04.2004. It was further pleaded that entire land is joint between the parties. No partition by metes and bounds was effected. It was further pleaded that the entire land has been transferred in the name of defendant no.1 on the basis of the gift deed. The said gift deed and the mutation sanctioned there upon are not binding on the rights of the plaintiff and defendant no.2. Hence this suit.

5. Respondent-defendant no.1 contested the suit that he is the sole owner of the suit property. Deceased-Jarnail Singh gifted the property in his favour vide gift deed dated 02.04.2003 with his free will. So, the plaintiff and defendant no.2 have got no right, title or interest to challenge the said gift deed. It was further pleaded that property in question was not the ancestral property of the parties. Deceased-Jarnail Singh was sole owner of the property by way of Will in his favour by his grandfather-Ishar Singh. So, he was fully competent to transfer the same.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether plaintiff is entitled to the declaration as prayed for?  
OPP
2. Whether gift deed dated 02.04.2003 executed by Jarnail Singh in favour of defendant no.1 is not binding upon the rights of the

plaintiff and defendant no.2.?OPP

3. Whether mutation no. 3853 sanctioned on the basis of the gift deed in favour of the defendant no.1 is not binding on the rights of the plaintiff and defendant no.2.?OPP
4. Whether plaintiff is entitled to permanent injunction as prayed for?OPP
5. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit of the appellant-plaintiff vide impugned judgment and decree dated 06.03.2014.

8. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff preferred the appeal and the same was also dismissed by the learned Additional District Judge, Jalandhar vide impugned judgment and decree dated 10.08.2015. Hence this Regular Second Appeal.

9. I have heard Mr. R.P.S.Rana, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that the suit property was ancestral property in the hands of Jarnail Singh. He has received the suit property from his grandfather-Ishar Singh as his father has predeceased Ishar Singh. He contended that the defendant no.1 has not led any evidence to prove the Will allegedly executed by Ishar Singh in favour of Jarnail Singh. He contended that from the statement of PW-2 Vijay Kumar, Kanugo, it is established that the suit property was ancestral in the hands of Ishar Singh. Jarnail Singh has succeeded to the estate of Ishar Singh. So, the

suit property will be ancestral in the hands of Jarnail Singh. Thus, he was not competent to execute any gift deed in favour of defendant no.1. The said gift deed is illegal. The parties are joint owners in possession to the extent of 1/ 3<sup>rd</sup> share each in the suit land. The learned Courts below have wrongly dismissed the suit.

11. I have duly considered the aforesaid contentions.

12. This regular second appeal has been preferred against the concurrent findings recorded by both the learned Courts Below. The law is well settled that in the second appeal the High Court has limited jurisdiction to interfere. The interference can only be warranted if the learned Courts below had misdirected itself in appreciating the evidence and their approach is perverse. In the second appeal, the High Court cannot re-appreciate the evidence on facts to substitute its own discretion on the ground that that was also the possible view.

13. It is further the settled proposition of law that the plaintiff has to prove its own case. He cannot take the advantage of the weakness in defendant's case. To support this view reference can be made to case **Punjab Urban Planning and Dev. Authority Vs. M/s Shiv Saraswati Iron & Steel Re-Rolling Mills, 1998(2) R.C.R (Civil) 292**. In the instant case, the impugned gift deed executed by Jarnail Singh in favour of defendant no.1 is being challenged primarily on the ground that the land in dispute was the ancestral property in the hands of Jarnail Singh and he was not competent to transfer the same by way of gift. So, it was incumbent upon the appellant to establish that the suit property was ancestral property in the hands of Jarnail Singh. It is further the settled

principle of law that in order to establish the ancestral nature of the property, the oral evidence carries no evidentiary value and the findings have to be recorded on the basis of the documents. PW-2 Vijay Kumar, Kanugo, has proved the excerpt Ex.P-1. In the excerpt Ex.P-1, it has been categorically mentioned that the mutation with respect to the suit land was entered in favour of Jarnail Singh and Gurbachan Singh son of Phuman Singh on the basis of the registered Will. So, the property was obtained by Jarnail Singh from his grandfather by way of Will and not by natural succession. In order to prove the property to be ancestral, it has to be shown that the person concerned has inherited the property by way of natural succession from his father, father's father or father's father father. But, in the instant case, even the documents relied upon by the appellant-plaintiff shows that Jarnail Singh has obtained the suit property from Ishar Singh by way of Will. There is absolutely no dispute with the proposition of law that the property obtained by way of Will or gift even though from the father or father's father cannot be considered to be ancestral and it shall be considered to be the self acquired property of the legatee. The learned trial Court in support of this proposition has rightly relied upon cases **C.N.Arunachala Mudaliar Versus C.A.Muruganatha Mudaliar and another, AIR 1953 Supreme Court 495** and **Balbir Singh Versus Bant Singh, 1996(3) Recent Civil Reports (Civil) 351**. No authority to the contrary could be produced by learned counsel for the appellant that the property shall be considered to be ancestral even though it has been received by way of Will. So, it is not established that the suit property was ancestral property in the hands of Jarnail Singh.

Thus, the suit property shall be the self acquired/ absolute property of Jarnail Singh.

14. I do not find any substance in the plea raised by learned counsel for the appellant that defendant no.1 has not proved the Will on the basis of which the property was transferred to Jarnail Singh. The said Will was not in question in this case. The plaintiff has not challenged the said Will in the plaint. The trial Court judgment shows that the age of appellant Rattan Singh on the date of filing the suit was 32 years. The suit has been filed on 19.01.2009. So, he might have born somewhere in the year 1976 or 1977. The mutation on the basis of Will in favour of Jarnail Singh was sanctioned on 30.01.1960. Thus, Jarnail Singh has acquired the suit property by way of Will even much before the birth of the appellant. So, he has no *locus standi* to challenge the Will in favour of Jarnail Singh.

15. As the suit property is proved to be the absolute property of Jarnail Singh, he was competent to alienate the same by way of gift deed in favour of defendant no1. The execution of the gift is otherwise proved from the evidence adduced by defendant no.1.

16. Thus, I have no reason to differ with the well reasoned findings recorded by the learned Courts below which do not warrant any interference by this Court in the regular second appeal.

17. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

**February 16, 2016**

s.khan

**(DARSHAN SINGH)**  
**JUDGE**