

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

105

Regular Second Appeal No.3783 of 2014 (O&M)

Date of Decision: February 01, 2016

Ravinder Pal Singh

...Appellant

Versus

Jang Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Hardeep Singh, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 06.04.2013 passed by the Civil Judge (Junior Division), Patiala, whereby the suit filed by the appellant-plaintiff for possession to the extent of 2/15th share of the suit property as fully detailed in the head note of the plaint on the ground that sale deed No.8913 dated 26.11.1997 executed by deceased Mohinder Singh father of the appellant in favour of respondents-defendants 1 and 2 is illegal, null and void being without legal necessity and without sale consideration being an ancestral property and seeking a relief of permanent injunction restraining the respondents-defendants from transferring the suit property, stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District Judge, (Fast Track Court), Patiala, on 13.01.2014.

2. It is the contention of learned counsel for the appellant that the land in the hands of Mohinder Singh was as a karta of the family, it being an ancestral land, he could not have sold the property in dispute in the present case except for legal necessity of the family. He was a man, who was spendthrift by nature and sold the said property to the

respondents-defendants 1 and 2 without any justification or requirement which would fall within the ambit of the statute permitting such sale. His contention is that the property having been sold, especially when the evidence which has been brought on record, indicates that the stand of the respondents giving the reason as to why the said property was sold having been found to be incorrect as the construction of the property had concluded in the year 1993, whereas sale deed is of the year 1997 and the respondents-defendants had taken a plea that Mohinder Singh had fallen short of finances to continue with the construction of the building is without any basis and justification. He, thus, contends that the Courts below have not appreciated the contentions of the appellant-plaintiff in the right perspective and proceeded to decide the case on conjectures and surmises. Prayer has, thus, been made for allowing the present appeal by setting aside the impugned judgment and decree.

3. I have heard the submissions made by learned counsel for the appellant but cannot accept the same in the light of the fact that the appellant-plaintiff has not been able to prove on record that the property in dispute in the present suit was an ancestral property. It is by now a settled preposition of law that in order to prove the property which is in dispute in a suit to be an ancestral property, the plaintiff is under an onus to trace the uninterrupted inheritance at his hands from a common ancestor through three degrees. The evidence which has been brought on record only proves the land at the hands of Puran Singh, who is grandfather of the appellant-plaintiff and not beyond that. It being only up to two degrees, the mandate and the requirement of the property to be ancestral, as claimed by the appellant-plaintiff, having not been complied with, the same has rightly

been held by the Courts below to be a self-acquired property and not an ancestral property. The findings as recorded by the Courts below on this aspect, cannot be said to be illegal or based upon no evidence as the appellant-plaintiff has failed to discharge his onus.

4. Rest of the contentions of the counsel for the appellant with regard to Mohinder Singh being a spendthrift and had sold the land by way of the impugned sale deed without any legal necessity and that the construction had completed in 1993, fall into oblivion and, therefore, the prayer made in the present suit has rightly been declined by the Courts below as the main plank of the appellant-plaintiff was that the land was ancestral in nature which he has not been able to prove.

5. 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.

6. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

7. In the light of the dismissal of the appeal, the application for stay i.e. CM No.8818-C of 2014, stands disposed of as infructuous.

February 01, 2016

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**