

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

**RSA No.2653 of 2016 (O&M)
Date of Order:29.08.2017**

Harjinder Singh and others

..Appellants

Versus

**Jeet Singh Deceased Through his LRs
Devinder Singh and others**

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Salar, Advocate,
for the appellants.

ANIL KSHETARPAL, J.

C.M.No.10362-C-2017

This is an application under Order 41 rule 27 read with Section 151 CPC, for permission to file a complete copy of Naksha Haqdarwar to be attached with the excerpt, Ex.PW2/A, whereas its incomplete copy has already been attached.

The record “Naksha Haqdarwar” is a public record and its incomplete copy has already been filed. Still further copy of Resolution No.81/16 is also sought to be produced by way of additional evidence. The aforesaid resolution is part of the proceedings of the consolidation register, which is again a public record.

In view of the fact that the aforesaid documents are part of official record, therefore, the application for permission to lead additional evidence is allowed.

C.M.No.7122-C-2016

Allowed as prayed for.

RSA No.2653 of 2016

Plaintiffs-appellants are against concurrent findings of fact arrived at by the Courts below.

Plaintiffs had filed a suit for joint possession. Plaintiffs had also sought declaration that the Will dated 09.03.2000, executed by late Sardar Tara Singh in favour of defendants is result of fraud and misrepresentation. Decree for permanent injunction was also prayed for. It was further pleaded by the plaintiffs that the suit property is ancestral as it was originally owned by Ram Singh.

Defendants contested the suit and submitted that Tara Singh purchased the suit property in the name of Dayal Singh @ Gurdial Singh in the year 1966, vide sale deed dated 20.01.1966. It was further asserted that the aforesaid property has been inherited by the plaintiffs being legal representatives of Dayal Singh. It was further asserted that Tara Singh, deceased was absolute owner of the property and the disputed land was not ancestral in the hands of Tara Singh. It was claimed that some property was given to Tara Singh by his elder brother Deva Singh vide gift deed dated 08.07.1969.

Learned trial Court after appreciating the evidence available on the file, held that only the property comprised in khasra Nos.110, 111, 20/2 is joint Hindu family coparcenary property. Whereas the remaining property was exclusive individual property of Tara Singh. In view thereof, it was held that the plaintiffs are entitled to 1/12th share in land comprised in khasra nos.110, 111 and 20//2/2.

Plaintiffs as well as defendants filed appeals against the

judgment passed by the trial Court. Learned first appellate Court after re-appreciating the evidence available on the file, upheld the judgment passed by the trial Court.

I have heard counsel for the parties at length and with their able assistance gone through the judgments as well as the paper book.

Learned counsel for the appellants has submitted that the plaintiffs had produced excerpt and, therefore, it is proved on the file that the property was joint Hindu family coparcenary property. He has further submitted that the judgments passed by the Courts below are result of misreading and non-reading of evidence.

I have considered the submission of learned counsel for the appellants. However, there is no force in the argument of learned counsel for the appellants.

No doubt, plaintiffs had produced Pawan Kumar, Special Kanungo in the office of Deputy Commissioner, who had prepared excerpt, Ex.PW2/A. However, on the reading of the excerpt would show that excerpt has been produced only with respect to the land owned by Rattan Singh. Rattan Singh was father of Tara Singh. Hence, plaintiffs have failed to prove that the entire property in the hands of Tara Singh was joint Hindu family coparcenary property. Coparcenary is a creation of law. Coparcenary cannot be created by an agreement of the parties. Before the property is held to be joint Hindu family coparcenary property, it is to be established that a coparcenary existed.

In the present case, on the other hand it is established that some property was gifted to Tara Singh by his brother Reva Singh and Tara Singh had purchased some property vide sale deed dated 20.01.1966 in the name

of Dayal Singh @ Gurdial Singh. Learned counsel for the appellants has not been able to point out any substantive non-reading of evidence or misreading of evidence by the Courts below while arriving at a findings of fact.

In view of the discussion made hereinabove, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

August 29, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No