

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

RSA No. 1612 of 2015

Date of Decision: 30.10.2017

GURMAIL SINGH AND ORS

-APPELLANTS

VS

JAGROOP SINGH AND ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ajay Pal Singh, Advocate,
for the appellants.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Plaintiffs are in second appeal against the concurrent judgments and decrees in a suit for declaration, joint possession and permanent injunction.

[2]. Plaintiffs claimed themselves to be owner of 3/8th share in the suit land as mentioned in the head note 'a' and 'b' of the plaint.

[3]. Lal Singh had a son namely Jagraj Singh. Jagraj Singh had four sons and two daughters namely Gurmail Singh (plaintiff No.1), Balwinder Singh (plaintiff No.2), Jagroop Singh (defendant No.1), Gurtej Singh (defendant No.5), Karamjit Kaur (defendant No.3) and Sukhjit Kaur (defendant No.4). Defendant No.2 – Jaspal Kaur is wife of Jagroop Singh son of Jagraj Singh. Surjit Kaur wife of Jagraj Singh has also joined hands

with the plaintiffs as plaintiff No.3.

[4]. Defendants No.3,4,7 and 8 were proceeded against exparte during the trial. Vide sale deed No.4351 dated 19.09.2008, some of the property was transferred by defendant No.6-Jugraj Singh in favour of defendant No.2. Mutation No.3078 was sanctioned to that effect. Another piece of land was also transferred by defendant No.6 in favour of defendant No.1 vide sale deed No.4350 dated 19.09.2008. Another piece of land was sold by defendant No.1 in favour of defendant No.7 and defendant No.8 vide sale deed No.2948 dated 19.09.2008. All the aforesaid sale deeds were challenged in the suit being illegal, sham and without consideration.

[5]. Plaintiffs claimed themselves to be owner in joint possession and have sought permanent injunction against defendants No.1,2,6 and 8, restraining them from alienating the suit property on the ground that the plaintiffs are Jat Sikh by caste and therefore, governed by custom.

[6]. In the written statement filed by defendants No.1,2,5 and 6, factum of land being ancestral and coparcenary was denied. Defendants No.3 and 4 also contested the suit. They admitted that if the land is proved to be a coparcenary, then they will also have right in the property being coparceners.

[7]. On the basis of evidence on record, it has been found

that the property in the hands of defendant No.6-Jugraj Singh was devolved upon him by Lal Singh by virtue of Will. Defendant No.6 himself while appearing as DW3 though has supported the case of the plaintiffs by deposing against the defendants but the factum of inheritance from Lal Singh by virtue of Will could not be denied. DW4 Satinder Kaur who was scribe of sale deeds (Ex.P13 and P14) has proved factum of execution of sale deeds. The Courts have taken judicial notice of the fact that the certified copy of mutation No.1362 regarding inheritance of Lal Singh was in favour of Jugraj Singh who was recorded to be owner of the property and the fact was ascertained that the inheritance by natural succession or by way of Will can be gathered by the certified copy of mutation No.1362. Even as per admission of DW1 Nasib Singh, cousin of defendant No.6, the factum of inheritance by way of Will was an admitted fact.

[8]. In order to prove the ancestral nature of the land, the appellants were duty bound to prove the same by proving the hierarchy upto three pedigrees in the context of devolving the land only by way of decedence and not otherwise. Having not done so, plaintiffs cannot stake their claim only on the basis of inheritance from Lal Singh that too by way of Will.

[9]. In view of material on record, the land in question could not be found to be ancestral in nature. The very

foundation of the case of the plaintiffs was found to be non-existent in view of evidence led by the parties.

[10]. In my considered opinion, the concurrent findings of fact recorded by the Courts below on appreciation of evidence on record cannot be faulted with.

[11]. No law point worth cognizance is involved in the present appeal, and the same is accordingly, dismissed.

30.10.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No