

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

**RSA No.1658 of 2015 (O&M)
Date of decision: 23.08.2017**

Rajinder Kaur and another

... Appellants

Vs.

Mukhtar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. V.K. Sandhir, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Plaintiffs are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby their suit for declaration was dismissed by the learned trial Court vide its impugned judgment and decree dated 18.05.2011 and their first appeal also came to be dismissed by the learned Additional District Judge vide impugned judgment and decree dated 10.12.2014.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that plaintiff filed the suit for declaration that she was owner in possession of 1/8th share out of land measuring 156 kanals 19 marlas, situated in village Burj Poohla, as per jamabandi for the year 2004-05 being legal representative of Ranjit Singh

(deceased), as said land was co-parcener and ancestral property and the plaintiffs were exclusive owner in possession over one house consisting as two room single storey, one room double storey, two store single storey, varandah, kitchen, cattle shed, latrine, bath room, upstairs and courtyard etc., as fully shown red in the site plan situated in village Burj Poohla, with relief of permanent injunction restraining the defendants from interfering and dispossessing them from the suit land and further restraining defendant No.1 from alienating the suit land in favour of anybody else, except in due course of law. It was submitted that plaintiff No.1 was widow of Ranjit Singh, while Yuvraj Singh plaintiff No.2 was minor son of Ranjit Singh, who was in custody of plaintiff No.1. Plaintiffs were owner in possession of 1/8 share out of land measuring 156 kanals 19 marlas and they were also co-owners in possession over the house in dispute, situated in village Burj Poohla and mutation No.377 dated 30.01.1987 had been sanctioned in favour of defendant No.1 regarding inheritance of Harnam Singh. Plaintiff No.1 was married with Ranjit Singh (deceased) on 12.10.1999 and out of their wedlock, plaintiff No.2 was born on 02.02.2001. Husband of plaintiff No.1 and father of plaintiff No.2 was serving in Punjab Police, who died in a road accident on 10.06.2002 at Patiala and plaintiffs, being legal representatives of Ranjit Singh, had 1/8th share out of suit land, which was to be devolved upon in his favour out of estate of Mukhtar Singh, defendant No.1 being his real son. Husband of plaintiff No.1 and defendants constituted a Joint Hindu Family and land in dispute was co-parcener and ancestral property of plaintiffs and defendants. House in dispute was exclusive ownership of the plaintiffs, which was got constructed by Ranjit

Singh, after obtaining house loan amounting to Rs.2,94,000/- from Punjab Police Department and thus, defendants had got no right, title or concern with suit land. Plaintiffs requested number of times to acknowledge and accept the plaintiffs to be owners in possession of 1/8th share in suit land, but they were threatening to interfere in their possession and to dispossess them.

Defendants were put to notice. Defendants No.1, 2 and 4 appeared and filed their contesting written statement, raising more than one preliminary objections. However, defendant No.3 did not appear and was proceeded against ex-parte. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiffs are entitled for declaration as prayed for?
OPP
2. Whether the plaintiffs are entitled for permanent injunction as prayed for? OPP
3. Whether the plaintiffs have got no locus standi to file the present suit? OPD
4. Whether the suit is not maintainable? OPD
5. Whether the plaintiffs are stopped by their own act and conduct from filing the present suit? OPD
6. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD
7. Whether this Court has got no jurisdiction to hear the suit? OPD
8. Relief.

In support of their pleaded cases, both the parties brought on record

their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiffs have miserably failed to prove their case for want of cogent and sufficient evidence. Accordingly, suit for declaration filed by the plaintiffs was dismissed by the learned trial Court vide its impugned judgment and decree dated 18.05.2011. Feeling aggrieved, plaintiffs filed their first appeal, but the same was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 10.12.2014. Hence this regular second appeal, at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

It is a matter of record that entire case of the plaintiffs-appellants was based on the plea that the suit property in the hands of late Sh. Harnam Singh, grandfather of husband of appellant No.1 was ancestral in nature and for that reason, Sh. Harnam Singh was not competent to execute the Will dated 07.02.1986 in favour of his sons. Subsequent mutation No.3787, which was entered and sanctioned on the basis of Will dated 07.02.1986, was also challenged to be an illegal document. However, in spite of the fact that the appellants were plaintiffs, they miserably failed to prove the suit property to be ancestral in the hands of late Sh. Harnam Singh.

No cogent evidence was brought on record in this regard. It is also the settled proposition of law that every property would be treated to be non-ancestral property, unless it is specifically proved to be ancestral property. Since there was no sufficient evidence brought on record by the plaintiffs-appellants

to prove the property in dispute to be ancestral in the hands of late Sh. Harnam Singh, they were bound to fail. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

During the pendency of their first appeal, plaintiffs filed an application under Order 41 Rule 27 of the Code of Civil Procedure (for short 'CPC') for additional evidence. On the insistence of learned counsel for the appellants, this Court has carefully gone through the application moved on behalf of the appellants before the learned first appellate Court. Contents of the application and particularly para 3 thereof, does not make any head or tail as to how the appellants were intending to prove the suit property to be ancestral in the hands of late Sh. Harnam Singh.

Even if the said application, which was rightly dismissed by the learned first appellate Court, was to be accepted, still the appellants would be unable to prove the property to be ancestral in the hands of late Sh. Harnam Singh. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate Court committed no error of law, by passing the impugned judgment and a separate order of even date i.e. 10.12.2014, while dismissing the first appeal of the plaintiffs and also their application under Order 41 Rule 27 CPC, thus, the impugned judgments and decrees passed by the learned Courts below deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first

appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned Additional District Judge in paras 10 and 11 of the impugned judgment, which deserve to be noticed here, read as under: -

“I have taken up both these together for discussion at the same time to avoid any sort of repetition. Plaintiffs have been claiming that after the death of Ranjit Singh, husband of plaintiff No.1 and father of plaintiff No.2, they have become owner in possession of 1/8th share out of land measuring 156 kanals 19 marlas, as the suit property was ancestral/co-parcenary property and further the house in dispute was exclusive property of Ranjit Singh, as it was constructed by him and thus, defendants have no concern with that property and further defendants be restrained from interfering in the peaceful possession of plaintiffs over such disputed land and house and they also be restrained from alienating same in any way. On the other hand, defendants took plea that plaintiffs are not related to that Ranjit Singh and they had no right, title or interest in the property as claimed nor such property was ancestral/co-parcenary property and in fact, it was owned by defendant No.1 exclusively and similarly, house in dispute was not owned by Ranjit Singh.

Firstly, it is to be seen, whether both the plaintiffs are related to deceased Ranjit Singh. Secondly, whether the disputed land is

ancestral/co-parcenary property in the hands of parties to suit and further house in dispute was exclusively owned by Ranjit Singh. Plaintiffs have placed on record voluminous record in order to prove that plaintiff No.1 is the wife of Ranjit Singh and further plaintiff No.2 is son of that Ranjit Singh, as they have proved invitation card of marriage, birth certificate of plaintiff No.2, photographs/negatives of marriage, marriage card, copy of voter lists, order of S.S.P., Jagraon and dependency certificate issued by Deputy Commissioner, Amritsar. Such documentary evidence finds corroboration from oral evidence and against that cogent and convincing evidence, there is mere denial from the side of defendants that plaintiffs never related to Ranjit Singh and that mere denial is not enough to nullify the case of plaintiffs that in fact, they are closely related to deceased Ranjit Singh. The finding of learned Trial Court to that aspect is absolutely perfect.

In order to prove the fact that the land in dispute is ancestral/co-parcernary property, plaintiffs have placed on record certain jamabandies Ex.P14, Ex.P15, Ex.P18, but such jamabandies do not include the fact that the suit land came to parties to suit from the last four generations and otherwise, plaintiffs have failed to prove any 'koorsinama' in order to establish that property came to defendant No.1 from his forefathers. It is material to mention here that plaintiffs have to prove relevant excerpt from the revenue department to establish that

such property was ancestral/co-parcenary property. In the absence of such evidence, there is no hesitation in saying that in fact defendant1 was the sole owner of such property, as the property was mutated on the basis of registered “Will” dated 7.2.1986 in favour of defendant No.1 and his three brothers and that “Will” was never challenged. Apart from that no evidence has come on record to establish that Ranjit Singh ever constructed house in dispute by taking any loan and thus, the finding of learned Trial Court on these issues is in accordance with law and there is nothing to interfere in the same and such finding is affirmed.

Although, plaintiffs could not establish that the suit property was ancestral/co-parcernary property, but it cannot be said that plaintiffs have no locus standi to file the present suit and further the suit of plaintiff is not maintainable or they are estopped by their act and conduct to file the present suit. As such, the finding of learned Trial Court on these issues is reversed and the same is decided in favour of plaintiffs.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the

Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

23.08.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No