

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

RSA No.2806 of 2015 (O & M)
Date of decision :10.08.2017

Jagmeet Singh

...Appellant

Versus

Puran Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Tarunveer Vashist, Advocate
for the appellant.

ANIL KSHETARPAL, J.

Plaintiff is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had claimed that the defendant No.1 is his grand father. He was owner of land to the extent of half share situated in village Khai. It is further claimed that the defendant No.1 being *karta* of the family had purchased the suit property after selling the land situated in village Khai. Hence, it was claimed that the suit property was Joint Hindu Family Coparcenary property and plaintiff has got a right since his birth. Plaintiff had also challenged the sale deeds dated 01.06.2006, 29.01.2007 and 02.05.2005 executed by defendant No.1 on the ground that the aforesaid sale deeds were without any legal necessity.

Defendants contested the suit. Defendant No.1 asserted that the property has been sold for a legal necessity i.e. for the purpose of marriage and other household expenses. It was claimed that it was a self acquired property of defendant No.1.

Learned trial court after appreciating the evidence available on the file, recorded a finding of fact that the property sold is not proved to be

Joint Hindu Family Coparcenary property. It was further held that the property was sold for a legal necessity.

First appeal filed by the plaintiff was also ordered to be dismissed by the First Appellate Court, after re-appreciating the evidence available on the file. Learned First Appellate Court held that the property at village Khai was sold before the birth of the plaintiff-appellant and the suit property was purchased much, after the property had been sold at village Khai. Learned First Appellate Court also held that the sale was for a necessity.

Learned counsel for the appellant has filed CM No.4885-C-2017 under Order 41 Rule 25 praying for framing of additional issue. The additional issue as proposed is as under:-

“(i) Whether the suit property is ancestral and coparcenary property or not?”

Learned counsel for the appellant has argued that although the entire case of the appellant was based upon the fact that the property is ancestral joint Hindu Family Coparcenary property, however, the Courts below committed error in not framing the aforesaid issue.

I have considered the arguments and with his able assistance gone through the judgments passed by the courts below.

Learned trial court had framed issue with regard to the entitlement of the plaintiff to the declaration as prayed for in the suit. Appellant was alive to the issue involved. Appellant led evidence. Both the courts below dealt with the aforesaid dispute and decided against the appellant. Once both the parties were alive to the dispute involved in the present case, additional issue at this stage cannot be framed. Reading of the

property is ancestral coparcenary property or not, has been adjudicated upon.

Learned counsel for the appellant has further submitted that the judgments passed by the Courts below are the result of misreading of evidence. Learned counsel for the appellant has further submitted that it is proved on the file that defendant No.1 sold the property at village Khai in the year 1960 and with the aforesaid money, he purchased the suit property. Therefore, the suit property is an ancestral property.

On being pointed out to show as to what is the misreading of evidence, learned counsel for the appellant failed to point out any substantive misreading of evidence by the courts below.

The property at village Khai was sold before the birth of the appellant and he has also failed to establish on the file that the property at village Khai was ancestral Joint Hindu Coparcenary property. Still further the property in dispute was purchased after a period of 1½ year from the date of sale of property in village Khai. No evidence has been produced to prove that the sale consideration received in year 1960 was used to purchase the suit property in dispute.

In view of the above discussion, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

Accordingly, appeal is dismissed.

10.08.2017
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No