

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

**RSA No.5020 of 2015(O&M)
Date of Decision: 10.11.2017**

Raswinder Singh

...Appellant

Versus

Nirmail Singh deceased through his LRs. and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. V.D. Sharma, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in second appeal against the concurrent judgments and decree passed by the Courts below.

[2]. Brief facts are that plaintiff filed a suit for joint possession to the extent of 1/4th share i.e. 9 bighas, 3 biswas of land out of land measuring 36 bighas,13 biswas comprised in revenue configurations as shown in the plaint. Plaintiff also challenged the transfer deed dated 26.08.2003 alleged to have been executed by defendant No.4 in favour of defendants No.1 to 3 by way of declaration to the effect that the same was not binding on the rights of the plaintiff qua his share in the suit property. Further relief of permanent injunction was also sought, restraining the defendants from selling, alienating and creating

any encumbrance over the suit property to the extent of share of the plaintiff.

[3]. Plaintiff alleged that defendant No.4 Kartar Singh was his grand-father. Defendant No.4 Kartar Singh had four sons namely Labh Singh, Nirmal Singh, Balbir Singh and Avtar Singh. Plaintiff is the son of Labh Singh. Nirmal Singh is defendant No.1, Balbir Singh is defendant No.2, Tarinder Singh son of Wariyam Singh is defendant No.3 and Kartar Singh himself as defendant No.4 and after his death he has been represented by legal representatives. Plaintiff also alleged that he constituted a joint Hindu family with defendant No.4 and the suit property was joint Hindu Family and ancestral property of the parties. Waryiam Singh father of Kartar Singh was having joint Hindu family property at the time of settlement of the village in the year 1960-61 BK. Defendant No.4 Kartar Singh succeeded the property from his father and mutation of inheritance was sanctioned in favour of defendant No.4 vide mutation No.208 on 11 Assu 1978 BK.

[4]. Plaintiff further alleged that defendant No.4 had given land to the extent of $\frac{4}{5}$ th share to all his sons and kept $\frac{1}{5}$ th share with him. Defendant No.4 further gave some land to all his sons by way of Civil Court decree dated 05.12.1970 and mutations were accordingly sanctioned in favour of all the sons.

Plaintiff also alleged that the land in the hands of Kartar Singh was ancestral in nature and plaintiff had birth right in the land kept by defendant No.4. Kartar Singh was bed ridden before his death and defendant No.1 being a very influential person in connivance with defendants No.2, 3 and Sub Registrar, got a transfer deed executed on 26.08.2003 from defendant No.4. As such, the transfer deed was false and fabricated. Plaintiff being one of the legal heirs of Labh Singh was entitled to 1/4th share in the suit property and the transfer deed was false, fabricated and fraudulent in nature.

[5]. The suit was contested by the defendants. Defendants No.1 to 3 took up the stand that the transfer deed dated 26.08.2003 was lawful and lawful mutation was sanctioned in pursuance thereof. Defendants No.1 to 3 became owner in possession of the suit property and the plaintiff was not competent to challenge the transfer deed. The factum of transfer has already been recorded in the revenue record. Defendant No.4 was residing with defendants No.1 to 3 before his death and they had served him. Defendant No.4 had executed a registered Will No.211 dated 15.09.1997 in favour of defendants No.1 to 3 and Paramjit Kaur widow of Avtar Singh. The suit property was duly mentioned therein. In the said Will, it was specifically mentioned that Labh Singh was residing

separately and plaintiff had never served defendant No.4. Thereafter, plaintiff was dislodged from the Will and property was given to defendants No.1 to 3 with free will and consent of defendant No.4. Transfer deed dated 26.08.2003 was lawfully executed.

[6]. On the basis of material on record, trial Court took cognizance of the fact that the transfer deed Ex.D1 dated 26.08.2003 was in respect of 36 bighas, 13 biswas situated in village Khaspur in favour Nirmal Singh, Balbir Singh and Tarinder Singh i.e. defendants No.1 to 3 which was executed with free will and consent of the testator. The transfer deed and Will dated 15.09.1997 Ex.D5 were genuine documents. Documents Ex.D2 *jamabandi*, Ex.D3 *khasra girdawari*, Ex.D4 copy of order dated 30.08.2005, Ex.D10 order of Assistant Collector dated 30.08.2005 and Ex.D11 mutation established that the transfer deed executed in favour of defendants was not the result of any fraud and the same was executed with free consent and wishes of defendant No.4. Plaintiff could not prove that the property in the hands of Kartar Singh i.e. 36 bighas, 13 biswas was ancestral property. No evidence was led in respect of the property having devolved upon defendant No.4 by way of descendance only. The property was partitioned by father of the parties during his lifetime and Kartar Singh kept 1/5th share as

notional share, thereafter, property ceases to be ancestral property even if presumed to be so earlier (though nothing has come on record to presume that the property in the hands of Kartar Singh, Labh Singh and Wariyam Singh was ancestral in nature). No excerpt has been produced on record, nor any other evidence has come on record to prove ancestral nature of the property. Defendant No.4 was residing with defendants No.1 to 3. Plaintiff was already given 50 bighas of land by defendant No.4. Notional share kept by defendant No.4 after distribution of land in favour of his sons could not be refuted by the plaintiff by means of any document on record. Even Kartar Singh got some land of Rani Bewa as per Ex.P6 which stood merged in the holdings of Kartar Singh defendant No.4. The property of other person on such merger that presumed joint Hindu family property would make character of entire land to be self acquired property. Plaintiff has to stand on his own legs and weakness in the case of defendants cannot be credited to the merits of the case of the plaintiff. The execution of transfer deed was duly established on record with reference to evidence of scribe Suresh Chand Mehta and attesting witnesses Tejinder Singh Namberdar and Kulbir Singh.

[7]. Both the Courts below have concurrently found that the land was not ancestral in nature in the hands of Wariyam Singh

and Kartar Singh, therefore the claim of the plaintiff based on such premise was not legally sustainable. No law point worth cognizance is involved in the present appeal. The present appeal is found to be totally bereft of merits and the same is accordingly dismissed.

10.11.2017	(RAJ MOHAN SINGH)
prince	JUDGE
Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No