

**RSA No. 6842 of 2016 (O&M)**

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

**RSA No. 6842 of 2016 (O&M)**

**Date of Decision: 20.2.2017**

Supreet Singh alias Surpreet Singh

.....Appellant

Vs.

Narinder Singh and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present : Mr. Raghav Goel, Advocate  
for the appellant.

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**RAMESHWAR SINGH MALIK J. (ORAL)**

**CM No. 2101-C-2017**

Applicant seeks permission to place on record pedigree table.

Application is allowed, as prayed for.

CM stands disposed of.

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Unsuccessful plaintiff is in regular second appeal, against the concurrent findings of facts, recorded by learned courts below, whereby his suit for declaration, claiming suit property as ancestral, was dismissed by learned trial court and his first appeal also was dismissed by learned first appellate court.

Brief facts of the case, as noticed by learned first appellate court in para 2 of its impugned judgment, are that Shri Sunder Singh was great grandfather of the plaintiff and defendant No.3 and grandfather of

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defendant No.1. Defendant No. 2 was mother of plaintiff and defendant No. 3 and wife of defendant No.1. Shri Sunder Singh formed a Joint Hindu Family with his sons i.e. Uttam Singh and others. He was head of the family. They were having common mess and common place of worship. Shri Sunder Singh was owner of the Joint Hindu Family ancestral property as detailed in the head note of plaint along with other properties. After his death, said property was inherited by his sons Shri Uttam Singh and others in equal shares. The said property in their hands was Joint Hindu Family ancestral coparcenary property and it never hanged its status. Shri Uttam Singh formed a Joint Hindu Family with his son Narinder Singh i.e. defendant No.1. After death of Shri Uttam Singh, said property came into the hands of defendant No.1. Defendant No.1 was the father of the plaintiff and property in his hands was the Joint Hindu Family property as coparcener and the property in his name was ancestral and joint property as it had devolved on him from his father. Thus, the property in dispute for all intents and purposes for the plaintiff is a Joint Hindu Family Property and as such he acquired ownership right in the property in dispute being the member of Joint Hindu Family and coparcener by birth.

Plaintiff had been enjoying the property in dispute considering it to be a Joint Hindu Family Property being coparcener and member of the Joint Hindu Family and also being grandson of Shri Uttam Singh. The plaintiff had 1/3rd share in the property in dispute. A day before filing of the suit, plaintiff came to know that defendant No.1 illegally gifted a part of the said property measuring 1000 square yards in favour of defendant No.2 vide gift deed dated 26.08.2002 Vasika No.6242 dated 26.08.2002 without the consent of the plaintiff and defendant No.3 and without any legal necessity

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to which he had no right. The said gift deed and other documents and mutation sanctioned on the basis of said gift deed were illegal, null and void and was liable to be declared as canceled and had no binding effect on the rights of the plaintiff. The impugned sale deed having Vasika No.14031 dated 26.02.2003 allegedly registered with the office of Sub Registrar, Ludhiana, was also illegal, wrong, null and void and was not binding on the rights of the plaintiff and was executed against the rights of the plaintiff and was liable to be set aside allegedly executed by the defendant No.1 in favour of the defendant No.4 and 5.

The plaintiff came to know that the defendants were trying to dispose off the entire suit properties including the share of the plaintiff to some third person illegally and as they were claiming themselves to be exclusive owners of the suit properties. The defendants had no right to dispose off the suit properties. Plaintiff had undivided share in this property to the extent of 1/3share. Plaintiff had also right to possess and enjoy the property in dispute which is the Joint Hindu Family property being co-sharer and coparcener of the Joint Hindu Family. The plaintiff when came to know about the said malafide intention of the defendants, he contacted them and requested them not to alienate any part of the property in dispute which is the Joint Hindu Family Property of the parties but the plaintiff was astonished to see the hostile attitude of the defendants who, instead of accepting the request of the plaintiff, started denying the title and share of the plaintiff in the suit properties and started asserting themselves to be exclusive owners of the properties and refused to admit the plaintiff as a co-sharer in the suit properties. This denial and threatened act on the part of the defendants had given a cause of action to the plaintiff to file the suit.

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Having been put to notice, defendants appeared and filed their contesting written statement raising more than one preliminary objections. Replication was filed by the plaintiff. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether plaintiff is entitled for declaration as prayed for? OPP
2. Whether plaintiff is entitled for permanent Injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether no cause of action has accrued to plaintiff against defendant? OPD
6. Whether the suit of plaintiff is time barred? OPD
7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
8. Relief.

With a view to prove their respective pleaded cases, both the parties produced 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 plaintiff has failed to prove his case. In the absence of sufficient and cogent evidence on behalf of the plaintiff, learned trial court dismissed the suit vide its impugned judgment and decree dated 4.2.2016. Dissatisfied, plaintiff filed his first appeal. Defendants No. 1 to 3 also filed appeal, seeking reversal of findings on issues No. 3 to 7. Both these appeals came to be dismissed by learned first appellate court vide its common impugned judgment and decree dated 20.10.2016. Hence this regular second appeal at the hands of the plaintiff.

Heard learned counsel for the appellant.

The entire case of the plaintiff revolves around the issue,

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whether the suit property in the hands of father of the appellant was ancestral in nature or not. Since appellant was plaintiff, heavy onus was on him to prove that suit property was ancestral, however, he miserably failed to prove it. That is what has been held by learned courts below. It is the settled proposition of law that presumption is in favour of the land being non ancestral, until and unless it is proved to be ancestral. In fact, Rajender Pal Singh, Special Kanungo, own witness of the plaintiff, appeared as PW2 and categorically admitted in his cross examination that there was no record in the revenue department which may reflect that Uttam Singh, father of defendant No.1, had inherited any property from his father-Sundar Singh.

On the other hand, pleaded and proved case of the defendants was that suit land was not ancestral in nature, because it came in favour of defendant No.1 on the basis of a Will suffered by his father. Mutation was also sanctioned in his name only on the basis of that Will. In view of these glaring facts duly established on record, this Court is of the considered opinion that learned courts below were well within their jurisdiction to pass the impugned judgments and decrees which deserve to be upheld.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court, this Court as well as Delhi High Court:-

1. Commissioner of Wealth tax, Kanpur etc. VS. Chander Sen etc, 1986 AIR (SC) 1753
2. Bhanwar Singh Vs. Puran and others, 2008 AIR (SC) 1490
3. Raghubir Singh Vs. Dalip Singh and another, 2004 (2) RCR (Civil) 595 (P&H)
4. Hawa Singh Vs. Daya Nand and others, 2010 (21) RCR

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(civil) 918 (P&H)

5. Taro Devi Vs. Raunak Singh and others, 2013 (5) RCR (civil)

59 (P&H)

6. Gurmamil Singh Vs. Rajbir Singh and another, 2014 (4) RCR

(civil) 397 (P&H)

7. Gyan Chand and others Vs. Ram Chander, 2014 (19) RCR

(civil) 616 (DH)

Before arriving at its own just conclusion on the basis of cogent findings, learned first appellate court re-considered the factual as well as legal aspect of the matter and appreciated the evidence in correct perspective. The relevant observations made by learned first appellate court in para 15 and 16 of its impugned judgments, which deserve to be noticed here, read as under:-

*“I have considered the respective contentions and evidence on file has been perused. The appellant/plaintiff has filed this suit to seek declaration that the suit property is joint Hindu Family ancestral property in which the appellant has 1/3rd share being coparcener/member of Joint Hindu family. Appellant has also sought declaration that gift deed executed by his father (respondent No.1) in favour of his mother (respondent No.2) and execution of sale deed dated 26.02.2003 by his father in favour of respondent No.4 and 5 are illegal, null and void. Obviously the entire claim of the appellant rests on the assumption that the suit property is having an ancestral character. Ancestral property is that property which descends upon the person in such manner that he acquired certain rights in it as against him and his father should have inherited that property as an unobstructed property. There is no*

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*presumption of a property being Joint Hindu Family Property and it has to be established by leading cogent and convincing evidence. Ancestral property descends upon the person in such manner that he required certain rights in it as against him and therefore his father should have inherited the said property as an unobstructed property. There is no presumption of the property being Joint Hindu Family property and it has to be established by leading cogent and convincing evidence. The appellant has miserably failed to prove that the suit property is ancestral. There is not a dispute of legal proposition that the property become ancestral property if the same has been inherited through three descends father, father's father and father's father's father. Star witness examined by the appellant Rajinder Pal Singh (PW-2), Special Kanungo, from the office of Deputy Commissioner who has categorically admitted in his cross-examination that there is no record in the revenue department which may reflect that Uttam Singh, father of respondent No.1, had inherited any property from his father Sunder Singh nor he has produced any such record in this court. Further he has admitted that Uttam Singh was owner of the property that was allotted to him and mutation No.22016 has been sanctioned. Meaning thereby is that Uttam Singh had not inherited the property from his father. Also Uttam Singh bequeathed his property in favour of respondent No.1 Narinder Singh by executing a Will bearing Vasika No.354 dated 06.06.2000.*

*This witness has further deposed that as per the pedigree table attached with the mutation, respondent No.1 Narinder Singh is shown to have three sisters namely Narinder Kaur, Jasbir Kaur and Ravinder Kaur but the mutation has been sanctioned in the name of*

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*Narinder Singh respondent No.1 only on the basis of Will of his father Uttam Singh and further he has clarified that respondent No.1 has acquired the property of his father Uttam Singh on the basis of above said Will of Uttam Singh. Thus, obviously, the suit land in the hands of respondent No.1 cannot be said to be an ancestral Joint Hindu Family property. It being so the appellant rightly has been held to be not entitled to seek first relief of declaration as the suit property is not ancestral in the hands of respondent No.1. It being so the respondent No.1 has every right to deal with the same in any manner he likes and in case respondent No.1 has executed a gift deed dated 26.08.2002 in favour of his wife (respondent No.2) and further if he has alienated some part of his property through registered sale deed in favour of respondent No.4 and 5 then the said gift deed or registered sale deed cannot be said to be illegal, null and void in any manner.*

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments rendered by learned courts below. He also could not point out any question of law much less substantial question of law, which is sine qua non for entertaining a 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 judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case

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noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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**

20.2.2017  
*Ak Sharma*

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