

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

**RSA No.669 of 2015(O&M)
Decided on:11.08.2017**

Gurdev Singh

.....Appellant

versus

Kashmira Singh and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. K.S.Dhillon, Advocate
for the appellant.

Rajbir Sehrawat, J.(Oral)

CM No.1939-C of 2015

This application is filed for condonation of delay of 30 days in re-filing the appeal.

For the reasons mentioned in the application, the delay of 30 days in re-filing the appeal is condoned.

Civil misc application stands allowed.

RSA No. 669 of 2015

This appeal is filed by defendant No. 2 who has lost before both the Courts below.

The brief facts of the case are that the plaintiffs in the suit were the one son and daughter and the defendants in the suit were the father and another son. Plaintiffs son and daughter filed a suit claiming joint ownership in possession over the suit property and also prayed that the alleged gift deed in favour of the other son, who was the defendant No. 2 in the suit, executed by the father, the defendant No. 1 in the suit, was not binding upon them. It was the claim of the plaintiffs that the suit property was ancestral

property and not received by their father through any instrument of transfer like Will and sale etc. Rather the property had come to their father by way of inheritance. Still further, property has come to their grand father through inheritance and therefore, the father could not have disposed of the property by way of gift deeds. The present appellant, who was defendant No. 2 in the suit, filed written statement saying that the property in question was self acquired property of the father and he had every right to execute the gift deed in his favour and therefore, he has rightly become the owner.

Parties led their evidence.

The plaintiffs proved the ancestral nature of the property by producing the PW-5 Vijay Kumar, Special Kanungo along with the excerpts and the records about those excerpts. To prove the gift deed in his favour, the defendant also proved one attesting witness for each gift deed.

After appreciating the excerpts, the trial court held the property to be ancestral property on the ground that the revenue records proved before the Courts duly show that the property had come to the father of the plaintiffs from his father Narain Singh through inheritance. Further Court below had recorded that the grand father of the appellants also got the property in question through the inheritance only. Therefore, the Court recorded the finding regarding the nature of the property to be ancestral property.

The defendant have not led any evidence regarding any fact to show that the property in question was a self-acquired property of his father. His claim qua the gift deed was rejected by the Court on the ground that his father(defendant No. 1) himself, had appeared as witness before the Trial

Court and while appearing as witness before the Trial Court the father himself had deposed that his son Gurdev, i.e. defendant No. 2, had been obtaining signatures on various papers without telling the purpose for what he was obtaining the signatures. Therefore, even the gift deeds have been held to be not genuine by the Trial Court. Therefore, the finding has been recorded by the Trial Court that the transfer and gift deed dated 11.07.2006 and 19.07.1967 respectively are illegal, null and void and have no value in the eyes of law.

Lower Appellant Court also upheld the finding of the Trial Court and therefore, dismissed the appeal filed by the present appellant.

While arguing the case, counsel for the appellant has submitted that suit for declaration, as to joint possession, against the father is not maintainable. To buttress his argument, he has relied upon the judgment of this Court reported as *2004(2) R.C.R.(Civil) 595 Raghubir Singh versus Dalip Singh and another*. However, judgment does not come to the rescue of the appellant because in the present case suit is not against the father only. Basically it is a suit against the son who claims to have got the exclusive rights over the joint property by way of some transfer deeds allegedly executed by the father. Therefore, the plaintiffs challenged those transfer deeds to reclaim the status of the property as a joint property and therefore, the claim for joint possession over the property. Hence, the suit was very much maintainable and has rightly been entertained by the Courts below.

Second argument by learned counsel is that excerpts are not admissible in evidence as a proof to establish the ancestral nature of

property. To support his argument, he has relied upon the judgment reported in *2012(2)PLR 567 Hawa Singh vs. Dayanand and others*. However, again this judgment does not help the appellant because in that judgment the original records were not produced before the Court. In the present case, the Court has recorded the finding that the original record and the relevant jamabandies along with the mutations have been produced before the Court and copies thereof have also been exhibited. Therefore, the evidence of ancestral nature of the property has been duly led by the plaintiffs in the case. Otherwise, also once jamabandies regarding the ownership, showing the successive inheritance of the parties, are proved on record, the nature of the property have to be deemed to have been proved as per the revenue record. Jamabandi is the statutory revenue record of rights. Even the certified copy of the same is admissible in evidence. In the present case, besides the copy, even the original jamabandi were produced before the Court alongwith relevant mutations. Therefore, the ancestral nature of the property was duly proved before the Trial Court.

During the arguments also, repeatedly the question was put to the counsel for the appellant that in the face of the proved revenue record showing to the contrary *on what basis he claims the suit property to be the exclusive property or self acquired property of his father?* He has failed to point out any transaction of transfer, sale, Will or any other instrument of transfer regarding the suit property in favour of his father. Therefore, on one hand revenue record shows the property to be ancestral property and on the other hand, the appellant has not shown any transaction in favour of his father by which the property might have been acquired by him as self-

acquired property. Therefore, it is conclusively proved on record that the property in question is the ancestral property between the parties.

The next limb of argument of counsel for the appellant is that even if the nature of the property is held to be ancestral property then also since the father had executed the instrument of transfer in favour of the appellant, therefore, these instruments of transfer shall be valid transfer of title atleast qua the land of share of the father in the joint holding. However, this submission of counsel for the appellant has also to be noticed and rejected for the simple reason that father himself appeared as witness before the Trial Court and deposed that he never intended to transfer any property in favour of the present appellant. He has further categorically deposed before the Court that his son, who is appellant here, had been obtaining his thumb impressions from time to time without telling any purpose for which those thumb impressions were obtained by him. Hence the Transfer deeds have been held to be not genuine. Once the Transfer deeds in favour of appellant are disbelieved then there is no question of any transfer of title in favour of appellant through those deeds.

No other argument was raised.

In view of above, this Court does not find any illegality in the findings recorded by the Courts below.

Hence, the present appeal is hereby dismissed being devoid of any merit.

11th August, 2017

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*