

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

RSA No.3036 of 2017

Date of decision : 11.08.2017

Monika

...Appellant

Versus

Anoop Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Saurabh Dalal, Advocate for the appellant.

ANIL KSHETARPAL, J.

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

The plaintiff had filed a suit for declaration claiming that she is grand daughter of Med Singh @ Umed Singh. She claimed that her father had got right in the property by birth as it was an ancestral Joint Hindu Family Property. The plaintiff had also challenged the registered Will dated 26.07.2010 on the ground that Med Singh @ Umed Singh could not execute a Will with respect to Joint Hindu Family Ancestral Property.

The defendants contested the suit and submitted that the suit property is not Joint Hindu Family Ancestral Property. Med Singh @ Umed Singh had executed a registered Will in favour of his three sons.

The learned trial Court after appreciating the evidence available on the file found that the registered Will dated 26.07.2010 is proved on the

file. It was noticed that Suraj Bhan, Numberdar, attesting witness has been examined. The trial Court further found that the plaintiff has failed to prove that the property is ancestral Joint Hindu Family Property.

The first appeal preferred by the plaintiff was also dismissed after re-appreciation of the evidence. The learned First Appellate Court further noticed that the plaintiff had given up his challenge to the due execution of the Will dated 26.07.2010. The learned First Appellate Court found that Med Singh @ Umed Singh had acquired the property from three sources, which are reproduced as under:-

- “(i) by way of inheritance from his father;*
- (ii) by way of some transfer by his bua (father's sister) and*
- (iii) by way of personal acquisition (purchase).”*

It was held by the Court that the plaintiff has failed to show how much property was inherited from his father. The plaintiff has further failed to identify which part of the property is ancestral. In this view of the matter, the learned first Appellate Court returned a finding that entire property shall deemed to be self-acquired individual property. First appeal filed by the appellant was ordered to be dismissed.

Learned counsel for the appellant has submitted that the appellant is grand daughter of Med Singh @ Umed Singh and the suit should have been decreed at least qua ancestral property.

I have considered the submission. However, I am unable to agree with the same.

There is a registered Will executed by Med Singh @ Umed Singh. The Will has been proved on the file. The plaintiff-appellant has

already given up his challenge to the due execution of the Will.

With regard to the second submission of learned counsel, I have carefully read the judgment passed by the First Appellate Court. The learned First Appellate Court has clearly recorded that the only property referred under Category (i) can be ancestral. However, no evidence has been produced to prove that how much property is ancestral Joint Hindu Family Property. The plaintiff has not produced any evidence to establish that to what extent the property falls in Category (i). In the absence of clear evidence, First Appellate Court has rightly held that in such circumstances, the entire property would be treated as self-acquired. Even before me, the learned counsel has not been able to point out as to which specific part of the property is ancestral Joint Hindu Family Property. In the absence thereof, it is not possible for the Court to record findings that how much property was ancestral joint Hindu Family Property.

For the reasons recorded above, I do not find any good ground to interfere in the concurrent findings of fact arrived at by the Courts below.

Appeal is dismissed.

11.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No