

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

RSA No.3607 of 2017 (O&M)

Date of decision : 21.07.2017

Gurdev Kaur

...Appellant

Versus

Mehnga Singh (now deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Fateh Saini, Advocate for the appellant.

Mr. Gulzar Mohammad, Advocate
for the Caveator-respondent(s).

ANIL KSHETARPAL, J.

The plaintiff-appellant has filed the present Regular Second Appeal against the concurrent finding of fact arrived at by the trial Court and affirmed by the First Appellate Court.

The plaintiff filed a suit for declaration that the gift deed dated 04.09.2002 and sale deed dated 13.03.2006 executed by defendant No.1 in favour of defendant No.7 is illegal, unlawful, inoperative, null, void and not binding on the rights of the plaintiff. The plaintiff also challenged the mutation sanctioned on the basis of the sale deed. The plaintiff further prayed for decree of permanent injunction restraining the defendant No.7 from alienating the property in any manner.

The plaintiff-appellant-Gurdev Kaur claimed that originally the

land was owned by Shri Mayya and the property in the hands of Mehnga Singh-defendant No.1 was joint ancestral land, therefore, defendant No.1 had no right to transfer the land through gift and sale deed. The appellant-plaintiff filed a suit on 04.06.2008.

The defendants contested the suit and claimed that the property was not ancestral in the hands of Mehnga Singh as it was never owned by Shri Mayya. The property in dispute was further never owned by Nihala. Plaintiff being married daughter has no concern with the land. Defendant No.1 transferred the property in favour of defendant No.7 in accordance with law and plaintiff has no locus to challenge the same.

The learned trial Court culled out following issues:-

- “1. *Whether the plaintiff is entitled for declaration as prayed for? OPP*
2. *Whether the plaintiff is entitled for injunction as prayed for? OPP*
3. *Whether the plaintiff has no locus standi to file the present suit? OPD*
4. *Whether the suit is not maintainable? OPD*
5. *Whether the plaintiff is estopped to file the present suit by her own act, conduct, omission and commission? OPD*
6. *Whether the suit is within limitation? OPP*
7. *Relief.”*

The learned trial Court, after appreciating the evidence available on the file, dismissed the suit filed by the plaintiff. The learned trial Court recorded a finding that the plaintiff has miserably failed to prove that the property was ancestral property and she was having any right by birth. It was held that the property was exclusive property of Santa Singh

father of Mehnga Singh. The learned trial court further recorded a finding that the plaintiff neither has locus standi nor suit as filed is maintainable.

The plaintiff preferred a first appeal. The First Appellate Court after re-appreciating the evidence also confirmed the finding recorded by the trial Court. It was once again held that the plaintiff-appellant has failed to prove that the land was ancestral in the hands of Mehnga Singh. The learned First Appellate Court held that although excerpt was produced by the plaintiff, however, Vijay Kumar, Special Kanungo examined to prove the excerpt, has neither brought the original record in the Court which is the requirement of the Chapter 9(1) (v) of Volume 1 of Punjab and Haryana High Court Rules and Orders nor even bothered to look into the mutations on the basis of which the property was transferred. It was specifically recorded that Vijay Kumar admitted in the cross-examination that he did not know on what basis mutation No.375 was sanctioned. He admitted that the record of the mutation No.375 could not be traced out. He further admitted that he has not produced or brought the documents of exchange on the basis of which mutation Nos.594, 1726, 185, 145 were sanctioned. The finding arrived at by the First Appellate Court is extracted as under:-

“23. In order to prove the inheritance of the suit property by Mehnga Singh from his four lineal ascendants by way of survivorship, the plaintiff was required to prove the copy of mutation by means of which the suit property was inherited by Nihala from Mayya, the mutation on the basis of which the suit property was inherited by Santa Singh from Nihala and the mutation on the basis of which the suit property was inherited by Mehnga Singh from his father Santa Singh. Plaintiff has not produced the copy of mutation on the basis

of which Nihala inherited the suit property from his father Mayya. Copy of Jamabandi for the year 1904-05 Ex.P14 and its Punjabi translation Ex.P14/A shows trhat the land measuring 153 Kanals 5 marlas situated in the revenue estate of Gopal Pur was owned by Santa, Mayya and Dalipa son of Nihala. Copy of mutation No.93 Ex.P22, the Punjabi Translation of which is Ex.P22/A is regarding the inheritance of the property of Nihala in favour of Santa Singh, copy of mutation No.375 Ex.P15 regarding inheritance of property of Santa in favour of Mehnga Singh, Resham Singh and Bakshish Singh in equal shares shows that the property of Santa Singh was devolved upon them on the basis of Will dated 15.10.1962. So, the property came to the hands of Mehnga Singh from his father Santa Singh by way of testamentary disposition Will dated 15.10.1962 and not by way of survivorship. Hence, it can not be said that the suit property in the hands of Mehnga Singh was ancestral and coparcenary property as it had not come to the hands of Mehnga Singh from his father Santa Singh by way of survivorship as per Section 6 of Hindu Succession Act.”

The appellant has filed the present Regular Second Appeal against the judgments passed by the trial Court as well as the First Appellate Court.

Counsel for the appellant has reiterated the submissions which had been raised and considered by the learned First Appellate Court. Counsel has not been able to show that findings arrived at by the trial Court as well as First Appellate Court suffer from any error. Counsel for the appellant has reiterated his submissions that since Special Kanungo had prepared the excerpt and concluded that the land was ancestral in the hands of Mehnga Singh, therefore, the findings of the Courts are erroneous.

I have considered the submissions made by the learned counsel for the appellant.

The learned Trial Court as well as the First Appellate Court has reiterated a concurrent findings of fact that since PW2 Vijay Kumar, Special Kanungo admitted that he has neither examined the file of mutation No.375 nor he has examined or brought documents of exchange on the basis whereof mutation Nos.594, 1726, 185, 145 were sanctioned. Findings arrived at by the Courts are not shown to perverse and suffering from any material illegality either on account of misreading or non-reading of evidence. The onus to prove that the land was ancestral lay on the plaintiff. Plaintiff has failed to produce the evidence to prove the aforesaid fact.

In view of what has been stated above, counsel for the appellant has not been able to point out any substantial questions of law involved in the present Regular Second Appeal. Counsel has further failed to bring forth any point within the parameters of Section 41 of the Punjab Courts Act enabling this Court to interfere in the concurrent findings of fact, hence the present Regular Second Appeal is ordered to be dismissed.

21.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No