

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

140

RSA-872-2017(O&M)

Date of Decision:16.08.2017

Manjit Kaur and another

.....Appellants

Versus

Balwinder Singh and others

.....Respondents

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

Present: Mr.Gurnam Singh, Advocate, for the appellants.

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful plaintiffs are in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby their suit for declaration was dismissed by the learned trial Court vide its impugned judgment and decree dated 03.12.2014 and their first appeal was also dismissed by the learned first appellate Court vide its impugned judgment and decree dated 22.07.2016, by upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that plaintiffs and defendants were related to each other and the plaintiffs had got pre-existing right i.e. 1/5 share each; out of 1/4th share (as recorded in the name of defendant no. 1) bearing khewat/khatauni no. 93/110, 134/154, 440/498, 381/426, 811/942, 757, 758, 811/942, Khasra no. 12//24/1, 17//10/4, 33//10/2/2, 34//6/2, 8/1/1, 14/2, 15/1, 15/2/1, 12//25/4, 17//5/1, 34//7/2, 548, 33//10/3/2, 10/4/2, 34//6/1, 7/1, 14/1, 61//4/4/, 6/2/2, 7/3/1, 14/1/2, as per jamabandi for the year 2003-04, situated within the revenue estate of village Patti Jattan

H.B. No. 38, Tehsil and District Ambala and mutation no. 3720 of 3.2.2006 land bearing khewat/khatauni no. 32/47, khasra nos. 17//11/1/1, 28//21/2/2/2, 34//9/1/2 as per jamabandi for the year 2001/02 and mutation no. 199 of 25.2.2006, situated within the revenue estate of Patti Shekhan H.B. No. 39. Tehsil and District Ambala. The suit land was ancestral in the hands of defendant no. 1. The parties to the suit had constituted a Joint Hindu Family and the relationship between the parties had been shown in the pedigree table as mentioned in para no. 2 of plaint. The suit land was the property of Joint-Hindu Family/ancestral land, which was earlier recorded in the name of Atma Singh and after his death the same was mutated in the name of his son-Hazura Singh. It was averred that Hazura Singh had expired on 6.1.2006 and the mutation of his in-inheritance bearing nos. 3720 and 199 were sanctioned in favour of the legal heirs of Hazura Singh including the defendant No. 1 to the extent of 1/4th share each. The defendant no. 1 who was the recorded owner of the land to the extent of 1/4th share as per the mutation nos. 3720 and 199 and the defendant no. 1 was having 4 children i.e. plaintiffs and defendant nos. 2 and 3, the defendant no. 1 was now threatening and declaring in the village that he would alienate, transfer or encumber upon the entire land of joint Hindu Family. The plaintiffs requested the defendants but the defendants were under the hand and glove of defendant no. 1, who instead of asking the defendant no. 1 started siding with the defendant no. 1.

Defendants were put to notice. They appeared and filed their separate written statement(s). One written statement was filed by defendant Nos.1 and 2. Defendant No.3 filed his separate but contesting written statement, raising more than one preliminary objections. Replication was

filed by the plaintiffs. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the mutation no. 3720 dated 03.02.2006 and mutation no. 199 dated 25.02.2006 sanctioned with regard to the suit land are illegal, null and void and not binding upon the rights of the plaintiffs? OPP.*
- 2. Whether the plaintiffs are also entitled to relief of declaration as prayed for? OPP.*
- 3. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP.*
- 4. Whether the suit land is ancestral co-parcenary property and plaintiffs have pre-existing rights therein, if so its effect? OPP.*
- 5. Whether the plaintiffs have no locus standi and cause of action to file and maintain the present suit” OPD.*
- 6. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD.*
- 7. Relief.”*

In order to prove the stand taken in their plaint and replication, plaintiffs brought on record their documentary as well as oral evidence. However, no evidence was led by the defendants in support of their pleaded case. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiffs have failed to prove their case for want of cogent and sufficient evidence. Accordingly, suit for declaration filed by the plaintiffs-appellants was dismissed by the learned trial court vide its impugned judgment and decree dated 03.12.2014. Feeling aggrieved, plaintiffs filed their first appeal which was also dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 22.07.2016. Hence, this regular second appeal, at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

Entire case of the plaintiffs-appellants was based on the plea that the suit land was ancestral in the hands of their great grandfather Late Shri Atma Singh. However, plaintiffs miserably failed to prove that the suit land was ancestral. In fact, plaintiffs sought to prove the suit land to be ancestral only by way of oral evidence. This was the reason that both the learned courts below recorded the concurrent findings of facts against the plaintiffs-appellants that they could not prove the suit land to be ancestral in the hands of their great grandfather Late Shri Atma Singh. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It goes without saying that the appellants being the plaintiffs, onus was on them to prove their pleaded case by leading cogent and convincing evidence. The appellants failed to bring on record the relevant evidence and that too for no good reasons. Faced with this difficult fact situation, learned counsel for the appellants sought to place reliance on an information dated 06.12.2016 (Annexure A-1) to the effect that the suit land was allotted to Shri Atma Singh son of Hira Singh. Shri Atma Singh was stated to be great grandfather of the plaintiffs-appellants. Although this Court would be exceeding its jurisdiction to look into Annexure A-1 because it was not part of the lower court record yet bare perusal of the said document would show that Annexure A-1 itself will not be sufficient to prove the suit land to be ancestral in the hands of Shri Atma Singh.

It is so said because the land came to be allotted in the name of Shri Atma Singh. It cannot be said to be ancestral in the hands of Shri Atma Singh by any stretch of imagination. It is also the settled proposition of law

that the suit land shall be treated non-ancestral unless it is duly proved to be ancestral by the party, who asserts and claims the suit land to be ancestral in nature. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate Court in para 10 to 12 of its impugned judgment, which deserve to be noticed here, read as under:-

*“As per averment in the plaint, the suit land is ancestral/joint Hindu Family property in the hands of the defendant no. 1. Admittedly, after death of Hazura Singh mutation no. 3720 and 199 were sanctioned, as per registered Will no. 183 dated 11.10.1989, in favour of his legal heirs i.e. namely Balvinder Singh (her father), Bhupinder Singh, Pala Singh and Chpinder Singh. The plaintiffs have claimed the suit land as ancestral land, but the plaintiffs failed to prove ancestral character of the suit land. The plaintiffs have pleaded that suit land was ancestral. Onus lies on the plaintiffs to prove ancestral character of the suit land. An ancestral property is that which is held by common ancestor coming down by descent to his heirs and it is proved to have been received by a man from a direct male ancestor not exceeding three degrees higher than him. Ancestral property is that property which is held by the common ancestor and comes down by descent to his heir and all other property is non-ancestral as held in **Babru Vs Basakha Singh and other, 1995 (2)***

CCC 440 (PH). *The plaintiffs were required to prove intkhab (excerpt), Khatoni istemal, Kahtoni paimaish and 'naksha hak-dar-war' to prove ancestral character of the suit land but the plaintiffs miserably failed to prove ancestral character of the suit land.*

*It is well settled that the presumption is in favour of the land being non-ancestral unless and until it is proved to be ancestral as held in **Hawa Singh v. Daya Nand (Punjab and Haryana):Law Finder Doc Id # 353646 2010 (2) PLR 567.** The very element of the suit land, being ancestral in the hands of Balvinder Singh is not at all reflected from the revenue record and was totally missing from the documentary as well as oral evidence and the appellants have failed to prove that the property was ancestral. Thus, the property at the hands of Balvinder Singh is not ancestral. The plaintiffs have failed to prove ancestral character of the suit land by leading cogent evidence and reliance is placed on Gurmail Singh v. Rajbir Singh (P&H) : Law Finder Doc ID # 611219, 2014 (4) RCR (Civil) 397.*

The plaintiffs have failed to lead any cogent and concrete evidence to establish ancestral character. Moreover, mutation no. 3720 and 199 Ex. P3 and Ex. P5 were entered and sanctioned on the registered Will no. 183 dated 11.10.1989. To prove the factum of the nature of the suit property being ancestral, it was incumbent upon the plaintiffs to show that the property was coming to Balvinder Singh through four male lineal descendants and the same had never been partitioned among them. However, in the present case, the appellants have not lead any evidence to prove this fact, rather it is clear from the impugned judgments and decrees that the property in dispute had devolved upon Balvinder Singh through a registered Will no. 183 dated 11.10.1989 and property in hand was not ancestral in its nature and character and

*reliance is placed on Taro Devi v. Raunak Singh (P&H) :
Law Finder Doc ID # 398778, 2013 (5) RCR (Civil) 59.”*

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any 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 Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

August 16, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No