

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

201

**CR No.989 of 2016 (O&M)
Date of Decision: 4.12. 2018**

DILBAG SINGH @ DILBAGH AND ANR

.....Petitioners

Versus

INDERJIT KAUR AND ORS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr.J.S.Brar, Advocate
for the petitioners.

Mr.Surinder Sharma, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

In a suit for declaration to the effect that the plaintiff is owner in joint possession to the extent of 1/6th share over the estate which was devolved upon Late Sh.Bhupinder Singh from Sardar Lachhman Singh, grandfather of the plaintiff is an issue on the strength of joint Hindu ancestral coparcenary property in the hands of Bhupinder Singh, father of the plaintiff.

The initial onus is on the plaintiff to prove nature of land to be joint Hindu ancestral coparcenary property in the hands of Bhupinder Singh. The challenge to the Wills dated 12.2.1962, 24.9.2009, transfer deeds dated 24.9.1999,

24.9.2009 and sale deeds dated 5.4.1999 and 6.4.1999 and subsequent entries in the name of defendants and mutation sanctioned in pursuance thereof are wholly dependent upon nature of land to be joint Hindu ancestral coparcenary property in the hands of Bhupinder Singh.

Perusal of the issues would show that there is no such issue framed in respect of validity of Wills, transfer deeds, sale deeds and mutations. It is a settled principle of law that initial onus in respect of proving ancestral land is on the plaintiff as the plaintiff asserts the same in affirmative. The right to lead evidence at prior point of time would be of the plaintiff as the validity of transactions at a subsequent stage would be dependent upon proving the land to be joint Hindu ancestral coparcenary property. It is true that the person who claims some right on the basis of a document is required to positively prove the same at the first instance. Such analogy is not applicable in the present case as the defendants would be able to rely upon genuineness of the Wills, transfer deeds and sale deeds only after proving the nature of property to be joint Hindu ancestral coparcenary property by the plaintiff. The onus keeps on changing. The initial onus is on the plaintiff and thereafter, onus may shift upon defendants for which parties would be within their right to seek recasting of issues at a subsequent

stage.

For the reasons recorded herein above, this revision petition is allowed. Impugned order dated 28.1.2017 is set aside. Normal consequences to follow.

December 04, 2018
anita

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No