

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

**RSA No.1410 of 1991 (O&M)
Date of Decision.02.11.2018**

Paramjit Singh and anotherAppellants
Vs
Jagir Singh and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Charanpal Singh Bagri, Advocate
for the appellants.

None for the respondents.

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AMIT RAWAL J. (ORAL)

The appellants-plaintiffs are in regular second appeal against the judgment and decree dated 3.4.1991 whereby the judgment and decree of the trial Court dated 20.12.1988 which decreed the suit of the plaintiffs, has been set aside.

Plaintiffs Paramjit Singh, Kuldeep Singh sons of Jagir Singh instituted the suit for declaration that they along with defendant No.5 Dilbagh Singh, another son of Jagir Singh born from his first wife had share in the property as the land at the hands of Jagir Singh was ancestral. Jagir Singh after the demise of his first wife performed second marriage and out of the wedlock, Sanju and Sonu i.e. defendant Nos.2 and 3 were born. He had fallen into bad company of one Karamjit Kaur and therefore, there was an apprehension that he may alienate the suit property.

Defendants No.1 to 4 contested the suit by setting up a registered Will dated 20.08.1992 executed by Jiwa Singh father of Jagir Singh and grand father of plaintiffs vide which he had bequeathed the property in favour of Jagir Singh to the exclusion of

other children Gurdev Singh and Balwant Kaur, thus, it was Jagir Singh who had become absolute owner on demise of Jiwa Singh. Defendant No.1 had bought 14 marlas plot from Jawala Devi on 26.08.1992 and therefore, plaintiffs were not entitled to any share in the same unless and until Jagir Singh intended to.

Plaintiffs examined himself as PW1 and Rajinder Singh as PW2 whereas defendants examined Nasib Singh as DW1 scribe of the Will and Karam Chand as DW2, witness of the Will, Jagir Singh as DW3, Mansa Singh as DW4, Kehar Singh as DW5, Neeti Chander as DW6 and Swami Dass, Office Kanungo as DW7.

The trial Court on the basis of the evidence found that the property at the hands of Jagir Singh was ancestral and accorded joint ownership to the plaintiffs and defendant No.5 to the extent of 1/5th share. Defendants assailed the judgment and decree of the trial Court before the lower Appellate, which reversed the finding, as noticed, by holding that nature and character of the property was not ancestral.

Mr. Bagri, learned counsel appearing on behalf of the appellants submitted that there is gross illegality and perversity as the lower Appellate Court has erroneously held that the property in dispute was not ancestral but self-acquired. Jagir Singh inherited the property from his father Jiwa Singh and grandfather of plaintiffs, therefore, being 4th generation in lineage have a right by birth. Jagir Singh could not have alienated the property except for legal necessity, therefore, there is abdication.

There is no representation on behalf of the respondents despite service which was complete way back in 1993.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Bagri, for, it was obligatory upon the plaintiffs to establish on record that the property at the hands of Jagir Singh, which had fallen from Jiwa Singh was ancestral i.e. Jiwa Singh had also inherited from his father. No such evidence or revenue excerpt which is mandatory requirement of law has been placed on record. I cannot remain unmindful of the fact that Jagir Singh had another brother and sister as Gurdev Singh and Balwant Kaur. They were also excluded by their father and the property in favour of Jagir Singh bequeathed, thus, it was a self-acquired property at the hands of Jagir Singh which he could deal in any manner and mode. Even otherwise, during the life time of the father when the property is not ancestral, the suit is not maintainable.

All these factors, in my view, lead to irresistible conclusion that the lower Appellate Court had not committed any illegality and perversity in reversing the judgment and decree of the trial Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 02, 2018

Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No