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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4428-2009 (O&M)
Date of decision : 29.05.2018

Suresh Chand

... Appellant(s)

Versus

Tula Ram and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Adarsh Jain, Advocate
for the appellant.

Mr. Sudhir Aggarwal, Advocate
for respondent No.10.

AMIT RAWAL, J. (ORAL)

CM-3667-C-2012

Allowed as prayed for.

RSA-4428-2009

The appellant-plaintiff is not successful in seeking relief in the suit claiming rights in the house in dispute by laying challenge to the judgment and decree dated 20.12.1995 executed by defendant No.1 in favour of defendant No.3 to 5.

The appellant-plaintiff instituted the suit asserting claim aforementioned on the premise that the house in dispute at the hands of defendant No.1 was ancestral. The defendant Nos.10 and 11 were arrayed, for, they stated to have purchased the part of the land from defendant No.5 in view of the execution of the title by virtue of the decree *ibid*. In the

written statement, the nature of the property was admitted.

On the basis of the preponderance of evidence both oral and documentary, the trial Court dismissed the suit and the appeal laid before the lower Appellate Court also met with the same fate.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that once the defendants had admitted the character and nature of the property being ancestral, there is no need to lead evidence as the onus had already been discharged. In such manner, defendant No.1 could not execute the decree except for legal necessity. Defendant Nos.2 to 9 are none-else, but the brothers and sisters. Defendant No.5 could not have further sold the property to defendant Nos.10 and 11. The Courts below have misread the oral and documentary evidence brought on record i.e. Ex.P-1 to Ex.P-11, therefore, there is a gross illegality and perversity.

Learned counsel appearing on behalf of the respondent No.10-defendant submitted that the plaintiff miserably failed to prove the nature and character of the property as ancestral, for, mere admission in the written statement would not discharge the liability of plaintiff from proving the onus. No excerpt or revenue record showing the inheritance of the property at the hands of defendant No.1 from the forefather had been proved on record, so that, the plaintiff being 4th generation in lineage can claim the right in the property. This is what the import of the impugned judgments and decrees, thus, urges this Court for dismissal of the present regular second appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jain, for, the plaintiff/appellant miserably failed to prove the nature and

character of the property being ancestral as no original excerpt as per the provisions of Sections 31 and 44 of the Punjab Land Revenue Act 1887 has been brought on record. Mere admission in the written statement would not absolve the plaintiff for discharging the onus. The aforementioned view of mine is drawn from the *ratio decidendi* culled out by the Hon'ble Supreme Court in “Banta Singh and others V/s Phuman Singh and others” 1971 PLR 1042”. For all intents and purposes, the Courts below had no other occasion to draw the inference that property at the hands of defendant No.1 was self-acquired, which had already been transferred by virtue of the decree dated 20.12.1995 in favour of defendant Nos.3 to 5, thus, defendant Nos.10 and 11 were none-else, but *bona fide* purchasers for a valuable consideration and therefore, right and title cannot be said to be invalid.

As an upshot of my findings, I do not find any illegality and perversity in the concurrent findings of fact and law, much less, involvement of the substantial question of law arises for determination. No ground is made out for interference. Accordingly, the present regular second appeal is dismissed.

29.05.2018

Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

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Whether Reportable Yes/ No