

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

-.-

RSA 2115 of 2012 (O&M)
Date of decision: 03.08.2018

Balbir Kaur and others

..... Appellant

Versus

Chanan Singh and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Brijeshwar Singh, Advocate
for the appellants

Mr. J S Brar, Advocate
for respondent No. 1

-.-

Rekha Mittal, J. (Oral)

CM 3385-C of 2018

Prayer in this application is for impleading legal representatives
of deceased Chanan Singh-respondent No. 1.

In view of averments made in the application supported by an
affidavit of Karnail Singh son of late Chanan Singh and arguments
advanced, the application is allowed and persons mentioned in para 5 of the
application are ordered to be impleaded as legal representatives of deceased
Chanan Singh, for the purpose of present lis, subject to just exceptions.

Amended memo of parties is taken on record.

Main case

The present appeal directs challenge against concurrent
findings recorded by the Courts whereby suit for declaration filed by

Malook Singh son of Ajit Singh (since deceased) now represented by his legal representatives that he is owner in joint possession to the extent of 5/24 share in land, detailed in the head note of plaint and transfer deed dated 31.01.2003, registered on 10.02.2003 is illegal, null and void and confers no right or title upon defendant No. 2, was dismissed by the trial Court vide judgment and decree dated 02.03.2009 and the plaintiff remained unsuccessful before the Ist Appellate Court whereby findings recorded by the trial Court were affirmed vide judgment and decree dated 12.12.2011.

The plaintiff staked his claim to challenge transfer deed dated 31.01.2003 and his entitlement to 1/12th share, in addition to 1/8th share on the premises that the suit property was Joint Hindu Family Coparcenary property, therefore, Ajit Singh, his father was not competent to alienate land measuring 29 kanal 5 marlas vide transfer deed in favour of Chanan Singh, his brother.

The sole submission made by counsel for the appellants is that as the contesting defendant has admitted the suit property to be Joint Hindu Family Coparcenary property, the same is sufficient to establish plea of the plaintiff/appellant in this regard. According to counsel, admitted facts need not be proved and there can be no better evidence than that of admission by the contesting party. For this purpose, he has referred to Section 58 of the Indian Evidence Act, 1872.

Counsel representing the contesting respondent has supported findings of the Courts with the submission that admission with regard to status of property is not at all sufficient to discharge the appellant from establishing his plea that the land in question was the Joint Hindu Family Coparcenary property and he had right therein, by way of birth.

I have heard counsel for the parties and perused the paper book particularly the judgments impugned.

Be that as it may, it is undisputed position in law that every property is deemed to be self acquired property of a person, recorded to be owner thereof unless proved otherwise. Equally settled is that an admission by the contesting party with regard to property being the Joint Hindu Family Coparcenary is not sufficient to prove as such nor can the party raising such a plea to escape his liability to prove that the property is the Joint Hindu Family Coparcenary property. Indisputably, the appellant did not adduce any evidence to substantiate his plea that the property in the hands of Ajit Singh was Joint Hindu Family Coparcenary property.

In this view of the matter, I do not find an error much less perversity in findings recorded by the Courts, warranting intervention .

For the foregoing reasons, the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

03.08.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No