

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

RSA No.3467 of 2012 (O&M)

Date of decision : 22.01.2018

Budha Singh

...Appellant

Versus

Dilbagh Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Aashma Gill, Advocate for
Mr. Aman Pal, Advocate for the appellant.

Mr. Sudeep Mahajan, Advocate with
Ms. Manjit Saini, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff had filed a suit for declaration claiming that the land in dispute is ancestral coparcenary Joint Hindu Family Property and the plaintiff is a co-sharer in the land in dispute. The plaintiff has also challenged the sale deed executed by defendant No.1, father of the plaintiff, in favour of his other son namely Dilbagh Singh dated 30.06.1999 with respect to the land measuring 37 kanals and 12 marlas. The plaintiff claimed that their family is governed by Mitakshra School of Hindu Law and, therefore, he has right by birth.

The defendants contested the suit. It was pleaded that the

property is not ancestral property. It was further pleaded that there is no Joint Hindu Family and the property is not a coparcenary property. It was further pleaded that the plaintiff is living separately since 1974 as he was employed in Border Security Force and never resided in the village.

In order to prove that the property is ancestral in nature, the plaintiff examined PW2-Randhir Singh, Kanungo Moharrar who had prepared the 'excerpt'. However, when he was cross-examined, he admitted that he does not know Urdu language and he got the documents translated from someone else. The person who has in fact translated the documents has not produced in evidence.

A reading of the sale deed would show that defendant No.1 while executing the sale deed in favour of the son had pleaded the legal necessity on the premise that defendant No.1 does not maintain the good health and he needs the amount for his treatment.

Both the Courts after appreciation of the evidence have recorded the concurrent findings of fact that property is not proved to be ancestral and the sale is on account of the legal necessity. The Courts have also found that the plaintiff has been residing separately, since 1974.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below.

Learned counsel for the appellant has reiterated the contentions which were raised before the Courts below.

Both the Courts have already examined these contentions in detail and have recorded a finding of fact. The finding of fact is neither

shown to be perverse nor result of mis-reading of the evidence.

In view thereof, there is no scope for interference in the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

22.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No