

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

**RSA No.1838 of 2013 (O&M)**

Kamlesh Rani and Ors.

...Appellants

Versus

Surinder Kumar and Ors.

....Respondents

**Date of Order: 10.5.2018**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Rahul Sharma, Advocate for  
Mr. K.K. Goel, Advocate for appellant No.2.

Mr. V.S. Rana, Advocate for the respondents.

**AMIT RAWAL, J (ORAL)**

**CM No.3243-C of 2017**

Prayer in the instant application under Order 22 Rule 3 CPC is  
for impleading LR's of appellant No.2.

Appellant No.2-Sheela Rani died on 09.10.2013 leaving behind  
his five legal heirs as mentioned in para 2 of the application.

For the purpose of pursuing the appeal and taking into account  
the contents of the application, which is supported by an affidavit, the same  
is allowed. LR's of appellant No.2 as mentioned in para 2 of the application  
are brought on record as party.

Registry to make necessary corrections in the memo of parties.

**RSA No.1838 of 2013**

Plaintiffs-appellants are in second appeal against the concurrent

findings recorded by both the courts below whereby their suit claiming declaration to the effect that they are owners in possession of one half share in land out of 16 kanal 4 marla land as described in the plaint with alternative relief to incorporate their names as owners in possession of specific khasra numbers, has been dismissed vide judgment and decree dated 21.12.2011 passed by learned Civil Judge (Jr. Division), Ludhiana and the appeal filed against the same has been dismissed by lower Appellate Court vide judgment and decree dated 29.1.2013.

LRs of appellant No.2 have been permitted to be impleaded as party vide order dated 03.4.2017.

Plaintiffs-appellants instituted the suit on the premise that late Sunder Dass was the owner of the property and after his death his property was inherited by his three sons namely Shardha Ram, Diwarka Dass and Ramji Dass in equal shares. Diwarka Dass and Ramji Dass were unmarried and they bequeathed their property in the names of Surinder Kumar and Raj Kumar sons of Harbans Lal son of Shardha Ram. Harbans Lal had three sons and two daughters (the plaintiffs). The plaintiffs claimed that suit property was joint Hindu Family Property and they are owners in possession of one half share of land measuring 16 kanal 4 marlas. Alternatively, they prayed that their names be incorporated as owners in possession of specific khasra numbers in the revenue record.

Upon notice, the suit was contested by the defendants by taking objections qua maintainability of the suit and locus standi etc. They pleaded that Diwarka Dass and Ramji Dass had executed wills in favour of Surinder Kumar and Raj Kumar out of love and affection for the services having been rendered.

Both the parties in order to support their cases produced evidence by way of witnesses as well as documentary in nature. On the basis of preponderance of evidence, the trial Court dismissed the suit observing that the suit property was not ancestral property. The appeal filed against the same has also been dismissed by lower Appellate Court.

Learned counsel for the appellant submitted that both the courts below have committed grave illegality and perversity while dismissing the suit of the plaintiffs. Defendant/respondent No.2 categorically stated on oath that he had land of his forefathers in village Hassanpur & Khana which itself proves that the suit land was actually an ancestral property. Admission was sufficient piece of evidence, therefore, the plaintiffs were legally entitled to get their shares in the suit property being ancestral property. Both the courts below have misread the evidence on record while overlooking the most relevant facts in true perspective.

Per contra, learned counsel for the respondents submitted that no irregularity or error has been committed by both the courts below. Mere admission would not partake the character and nature of the ancestral property unless and until some material record is brought on record. In support of his contention, he relied on a judgment of Hon'ble Supreme Court reported as **Valliammai Achi Vs. Nagappa Chettiar and Ors, AIR 1967 SC 1153.**

I have heard learned counsel for the parties and perused the paper book with their able assistance.

None of the evidence or any material record has been brought before this Court to prove the nature and character of the property as ancestral. Mere admission of defendant No.2 in the written statement

regarding the nature of the suit property would not discharge the onus.

This Court has already held in RSA No.5277 of 2014 that mere admission will not render the property as ancestral.

In view of aforesaid discussion, I am of the view that both the courts below have rightly declined the relief to the appellants while delivering well reasoned judgments, which cannot be said to be illegal and unjustified. On the other hand, registered will brought on record executed in favour of Surinder Kumar and Raj Kumar has been proved on record.

Dismissed.

**May 10, 2018**  
**manoj**

**^(AMIT RAWAL)**  
**JUDGE**

Whether speaking/reasoned: Yes/No  
Whether Reportable : Yes/No