

RSA-1781-2016 (O&M)

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

**RSA-1781-2016 (O&M)
Date of decision : 26.11.2018**

Ujjagar Singh and another

... Appellants

Versus

Ashok Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Bhardwaj, Advocate for the appellants.

AMIT RAWAL, J.

The appellants-plaintiffs have not been successful in claiming declaration, permanent injunction and possession in respect of land measuring 25 kanals 8 marals situated in Village Manka, on the premise that Bachitar Singh, the father of the plaintiffs, could not sell the land vide sale deed dated 30.04.2004 in favour of defendant Nos.1 and 2 as it was ancestral property.

Defendant Nos.1 & 2 opposed the suit by supporting the sale deed and denied the nature of the property to be ancestral. It was stated that Bachitar Singh had inherited the property from the father-Weryam Singh and not from Chamela Singh. Defendant No.3 also opposed the suit, but during the pendency of the suit died. It was further stated that the sale was for necessity.

Despite bringing on record extensive evidence in the shape of revenue record (Ex.P1 to Ex.P-6 & Ex.PW2/A, Ex.PW3/1, Ex.PW3/1 to Ex.PW3/59) including the revenue excerpt-Mark A, the the trial Court dismissed the suit and the appeal preferred before the lower Appellate Court was also met with the same fate.

RSA-1781-2016 (O&M)

Learned counsel appearing on behalf of the appellants-plaintiffs submitted that Bachitar Singh, during his life-time, in respect of land measuring 172 kanals 4 marlas situated in Village Bullana, had suffered a consent decree dated 20.03.1987 in favour of the plaintiffs. The said property was also ancestral, but could not have alienated the land measuring 25 kanals 8 marlas situated in Village Manka in the manner and mode. The nature and character of the property being ancestral has been proved through revenue excerpt as it was Chamela Singh, great grand-father of the plaintiffs, had inherited the property and therefore, the plaintiff being 4th generation in lineage had a right by birth.

I am afraid the aforementioned argument is not sustainable as there is no denial to the fact and law that the ancestral property cannot be partitioned and even after partition, character remained ancestral. By virtue of the decree of 1987, the plaintiffs became owner of land measuring 172 kanals 4 marlas to the extent of 1/3rd share. There was equal distribution by the common ancestor in favour of the defendants.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Bhardwaj to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

26.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**