

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

RSA No.1786 of 2016 (O&M)

Date of Decision.29.11.2018

Sukhdev Singh and others

....Appellants

Vs

Jaspal Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anil Chawla, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M.No.4828-C of 2016

For the reasons stated in the application, delay of 9 days in
re-filing of the appeal is condoned.

Application is allowed.

C.M. No.4829-C of 2016

The application for impleadment of legal representatives of
deceased-appellant No.5, Joginder Singh is allowed subject to all just
exceptions and the legal representatives are ordered to be brought on
record for the purpose of adjudication of the present appeal.

RSA No.1786 of 2016

The present regular second appeal is directed at the instance
of the appellant-defendants challenging the concurrent finding of fact
whereby the suit of the respondent-plaintiff for declaration conferring
him ownership to the extent of 1/7th share and also injunction
restraining defendants No.1 to 7 from alienating the suit property.

The suit was based on averment that Santa Singh was owner of land. He had two sons namely Mangal and Shiv Dev. Mangal was unmarried and died issueless. Shiv Dev had one son Chanan Singh. Roor Singh was only son of Chanan Singh. In view of the demise of Mangal Singh, his share and the share of Chanan Singh devolved upon Roor Singh. A mutation in this regard was also sanctioned. Roor Singh had five sons, one daughter and wife. Jaspal Singh, Joginder Singh, Binder Singh, Nirmal Singh, Ranjit Singh are sons, Amrik Kaur daughter and Gian Kaur wife. Jaspal Singh is the plaintiff and defendants are sons of Joginder Singh and Ranjit Singh. It was alleged that property at the hands of Roor Singh was ancestral but in view of testamentary document dated 27.02.2001 bequeathed in favour of the appellants-defendants being grand sons. The Courts below did not find favour with the defence of the defendants as noticed above.

Mr. Anil Chawla, learned counsel appearing on behalf of the appellants-defendants submitted that claim of the plaintiff at the best could have been confined to 1/14th share. He could not claim to the share of Mangal Singh as it could not be treated as ancestral property. There was no impediment for Roor Singh to bequeath his 1/8th share by way of testamentary document, though the Will pertained to the entire land.

I am afraid aforementioned argument of Mr. Chawla is not sustainable, as the nature and character of the property even on mutation of the share of Mangal Singh remained same. It could not be an acquisition by self. By the time suit was filed, Roor Singh

died. His share was equally divided amongst all the legal heirs. Without any legal necessity, he could not have willed away to the grand sons i.e. sons of Joginder Singh and Ranjit Singh, thus, claim of 1/14th share as propounded in this Court is wholly devoid of merit.

There is no force in the argument with regard to bequeathing of 1/8th share of Roor Singh as he did not claim ownership of entire property. There would been some substance in the submission, had the intention reflected in the Will was on account of impression that Roor Singh was owner of the entire property without having character of ancestral, thus, concurrent finding of fact decreeing the suit cannot be said to be erroneous and suffered from any illegality and perversity. No ground for interference is made out.

The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 29, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No