

In the High Court of Punjab and Haryana at Chandigarh

**RSA-1753 of 2015(O&M)
Date of Decision: 17.9.2018**

Rajesh Kumar and another

---Appellants

versus

Sohan Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Rishi Nijhawan, Advocate
for the appellants**

Rekha Mittal, J.

CM No. 4765-C of 2015

Prayer in this application is for condoning delay of 10 days in
refiling the appeal.

Heard.

Allowed as prayed for. Delay of 10 days in refiling the appeal
stands condoned.

Disposed of accordingly.

RSA No. 1753 of 2015

Challenge in the present appeal has been directed against
concurrent findings recorded by the courts whereby suit for declaration to
challenge the sale deed No. 3156/1 dated 15.3.2004 executed by Baldev
Singh defendant No. 3 in favour of defendants No. 1 and 2 on the premise
that the suit property is joint Hindu family coparcenary property in the

hands of defendant Baldev Singh, therefore, he was not competent to alienate the suit property without any legal necessity and for benefit of estate, has been rejected by the trial court vide judgment and decree dated 8.8.2012 that came to be affirmed in appeal by the Additional District Judge, Kaithal.

Counsel for the appellants would argue that the appellants being sons of Baldev Singh defendant No. 3 are entitle to challenge the sale deed in question as they are entitle to a share in the suit land, joint Hindu family coparcenary property in the hands of their father Sh. Baldev Singh. It is further argued that defendants No. 1 and 2 miserably failed to adduce any evidence that sale deed dated 15.3.2004 was executed by Baldev Singh for legal necessity or benefit of estate, therefore, judgments and decrees passed by the Courts are liable to be set aside.

To substantiate their plea that the suit property has status of joint Hindu family coparcenary property, it is argued that admission in this regard by the contesting defendants that Baldev Singh was *karta* of the family is sufficient. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Gannmani Anasuya and others vs. Parvathini Amarendra Chowdhary and others** 2007(3) RCR (Civil) 381.

The appellants-plaintiffs have depicted the pedigree table in the plaint which has been reproduced in para 2 of the judgment of trial court. Counsel for the appellants was given an opportunity to inspect the records of the trial court and point out if there in any material on record showing that suit land was owned by Jawahra inherited by Sadhawa on the basis of natural succession and thereafter by Gurdial Singh and on death of

Gurdial Singh by Baldev Singh by way of natural inheritance. Counsel is not in a position to point out any such materials on record to substantiate plea of the appellants that suit property was joint Hindu family coparcenary property in the hands of Sh. Baldev Singh in which the appellants got a right by way of birth.

As per the settled position in law, every property is deemed to be self-acquired property of a holder unless proved otherwise. The plea of the appellants that the contesting defendants admitted Baldev Singh to be *karta* of the family is not sufficient to prove that suit land is joint Hindu family coparcenary property. Defendants No. 1 and 2 are not the members of family of the appellants or Baldev Singh in order to say something about nature of the suit property. In the given scenario, the appellants cannot derive any advantage to their contention from the judgment in **Gannmani Anasuya and others' case (supra)**.

The appellants have claimed possession of the suit property and relief of injunction against forcible dispossession. As has been rightly noticed by the trial court that during life time of Baldev Singh stated to be *Karta* of the family, plaintiffs cannot claim their possession over the suit land. This apart, the appellants failed to adduce any evidence much less documentary with regard to their possession of suit land, therefore, entitle to seek injunction against forcible dispossession.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

17.9.2018

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