

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

RSA No. 3964 of 2016(O&M)

Date of decision: 1.10.2018

Prahlad

.....Appellant

VERSUS

Mahavir and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Jai Vir Yadav, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration to the effect that appellant/plaintiff is owner in possession to the extent of 1/6th share in land measuring 57 kanals situated in village Nangal Kalia, Tehsil Narnaul by challenging mutation of inheritance of Jhutha in favour of Bhartha and Naraini bearing No.1855 dated 09.05.1972 and mutation of inheritance to Bhartha in favour of the appellant and defendants bearing No.1975 dated 30.09.1977 being wrong, illegal, null and void was dismissed vide judgment and decree dated 31.08.2013 passed by the Civil Judge (Junior Division), Narnaul (hereinafter to be referred as the trial Court) and appeal preferred by unsuccessful plaintiff did not find favour with the Additional District Judge, Narnaul.

The case set up by the plaintiff/appellant is that Jhutha son of Ram Sahai, grandfather of the plaintiff/appellant was owner in possession to the extent of 1/3rd share in the suit land and the same was coparcenary property. Jhutha and Bhartha son of Jhutha effected notional partition in

the lifetime of Jhutha and $1/6^{\text{th}}$ share was given to Bhartha and Jhutha retained $1/6^{\text{th}}$ share with him. Jhutha died and after his death, his $1/6^{\text{th}}$ share was inherited by Bhartha and Naraini in equal shares, therefore, Bhartha became owner in possession to the extent of $1/4^{\text{th}}$ share after adding $1/12^{\text{th}}$ share received in succession plus $1/6^{\text{th}}$ share received in notional partition. Mutation No.1855 dated 09.05.1972 was wrongly sanctioned which is against notional partition.

Counsel for the appellant has submitted that Mahavir – contesting respondent/defendant appeared in the witness box and in his cross examination, he has admitted the factum of notional partition. Mahavir executed a release deed in favour of his brother Duli Chand and in the said release deed, it is mentioned that the suit property is ancestral property. It is argued with vehemence that in view of aforesaid admission by Mahavir, claim of the appellant/plaintiff is liable to be accepted by setting aside judgments and decrees passed by the Courts.

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned.

Be that as it may, there is no documentary evidence with regard to suit land being ancestral property in the hands of Sh. Jhutha in which Bhartha, his son acquired right by way of birth. As per settled position in law, admission made by a contesting party that the property was coparcenary property is not sufficient to establish plea of the appellant particularly in the circumstances that the said admission has not been made by Jhutha. In this view of the matter, appellant cannot derive any advantage to his contention from the alleged admission by Mahavir.

No sooner the appellant failed to adduce evidence to prove that suit land was coparcenary property in the hands of Jhutha, any such plea raised by him that there was a notional partition between Jhutha and Bhartha whereby 1/6th share was given to Sh. Bhartha is of no avail and consequence. On the contrary, 1/3rd share belonging to Jhutha continued to be his ownership in the revenue record that came to be inherited by his class I heirs namely Bhartha and Naraini to the extent of 1/6th share each on the basis of inheritance by way of natural succession under the Hindu Succession Act, 1956. In this view of the matter, no error much less perversity can be noticed in consistent findings recorded by the Courts, warranting intervention.

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

OCTOBER 1, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no