

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA-5243-2016 (O&M)

Date of decision: September 05, 2018

Kamlesh Kumar

...Appellant

Versus

Rajender Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Kanwal Goyal, Advocate for the appellant.

Rajan Gupta, J.

Present appeal has been preferred to impugn findings of two courts below on the ground that same are perverse and based on misappreciation of evidence.

Plaintiff/respondent No.1 filed a suit for declaration against the appellant and proforma respondents No.2 to 5 to the effect that he is owner and in joint possession of 1/6th share in the land as detailed in the plaint. It was alleged that defendants No.1 & 2 are brothers and defendants No.3 to 5 are sisters of the plaintiff. Anant Ram and Lajwanti, parents of the parties, had already died on 20.7.2001 and 14.01.2004 respectively. After their death, defendants No.1 & 2 manipulated the mutation of inheritance in their names. Since no notice was given to the plaintiff at the time of sanction of mutation of inheritance of Anant Ram and Lajwanti, plaintiff was entitled to inherit the land in question to the extent of 1/6th share. Notice of the suit was issued to the defendants.

However, defendants No.1, 3 & 5 admitted the claim of the plaintiff. Defendant No.2 contested the suit and pleaded that the suit property is a self-acquired property of defendants No.1 & 2. Plaintiff and defendants No.3 to 5 had no right, title or interest therein. Anant Ram had executed a Will dated 16.7.2001 in favour of defendants No.1 & 2. Similarly, defendants No.1 & 2 inherited the properties of their mother Lajwanti on the basis of Will dated 10.01.2004. Some of the disputed property was purchased by defendants No.1 & 2 from one Jawala Singh son of Gujjar Singh, vide sale deeds dated 17.5.1996 and 31.5.1996. Plaintiff had left the house for last 36 years and did not return. After hearing both the parties and perusing oral as well as documentary evidence, the trial court partly decreed the suit, declaring him to be owner in joint possession of the suit property except Khasra Nos.40//20 (7-12), 39//15 (8-0), 16/1 (4-0), 40//11 (7-12) and that mutation Nos.583 and 584 pertaining to inheritance of Anant Ram and Lajwanti were not recorded correctly. Further defendants No.1 & 2 were restrained from alienating the suit property or any part thereof beyond their share. It observed that the entire property left by Anant Ram was inherited by his three sons, three daughters and his widow Lajwanti. After the death of Lajwanti, her entire share devolved upon her three sons and three daughters. Thus, plaintiff was held to be co-owner in joint possession to the extent of 1/6th share in the suit property, which was purchased by defendants No.1 & 2 jointly vide sale deeds dated 17.5.1996 and 31.5.1996. Findings were affirmed by the lower appellate court.

I find no infirmity with the findings arrived at by both the

courts below. Only plea raised before this court is that judgments of two courts below are based on misappreciation of evidence as well as law. I find no substance in this plea. A perusal of concurrent findings of two courts below reveals that same suffer from no infirmity. No other substantial question of law has been urged.

Dismissed.

CM-13602-C-2016:

Since the main appeal has been dismissed on merits, this application for condonation of delay does not survive and the same is also dismissed.

(RAJAN GUPTA)
JUDGE

September 05, 2018
'Rajpal'

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