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RSA- 5492-2016(O&M)
Date of decision : 14.11.2018

versus

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Mr.Navneet Singh, Advocate
for the respondent-caveator.

Appellant-plaintiff has not been successful in asserting claim in the suit property vis-a-vis the estate of Roopla, his father who unfortunately died on 21.02.1975. There were 7 heirs of Roopla (son of Teka son of Gurdayal son of Khubi), each heir was entitled to $\frac{1}{7}$ share out of remaining $\frac{1}{8}$ share of total ancestral land which came to be $\frac{7}{56}$ shares out of total . Defendants No. 1 to 4 opposed the suit by denying the nature and status of the property to be ancestral but alleged the same to be their self acquired property.

Plaintiff in order to prove his case brought on record umpteen number of documents and so did the defendants. On the basis of this evidence, the trial Court found that nature of the property was ancestral and

decreed the suit. Appeal preferred before the Lower Appellate Court was allowed.

Mr.R.S.Malik, learned counsel appearing on behalf of the appellant submitted that Jamabandies Ex.P1 for the year 1983-84, Ex.P2 for the year 2003-04, Ex.P3 for the year 1943-44(Urdu version), Ex.P4-Hindi translation for the Jamabandi for the year 1943-44, Ex.P5-death certificate of Roopla dated 21.2.1975, Ex.P6-mutation *Parat Patwar*, Ex.P7-*Parat Sarkar* mutation no.3483, Ex.P8-Aksh Shijra, Ex.P9-report of PW4 Patwari Krishan Kumar, established the nature of the property to be ancestral. The plaintiff was in 5th generation in lineage and, therefore, had a right to the estate of Roopla who had inherited the same from his father Teka and so on and so forth. It was alleged that on demise of Roopla the property was required to be transferred in favour of the appellant-plaintiff being the only son and not in favour of the sisters and second wife.

I am afraid the aforementioned argument of learned counsel is not sustainable, for as per report Ex.P8, in the year 1960-61 Teka, grandfather of the appellant had transferred his 4/5 share in the name of his sons Ram Saroop, Nand Lal, Jug Lal and Roopla and he inherited the same from Hardei and not Gurdayal. Therefore, there was no continuity in lineage and could not assert the ancestral character. In my view the plaintiff has not been able to show any other pedigree table to prove that the property in dispute was ancestral in nature. Even the daughters prior to the amendment in Section 6 of the Hindu Succession Act had no right in the coparcenary property. In the absence of the nature of the property being ancestral, the mutation of inheritance by way of natural succession was the right course

which has been affected.

The aforementioned argument of learned counsel has no merit as the same cannot stand on the touch stone of illegality and perversity so as to warrant interference by this Court.

Appeal is dismissed.

(AMIT RAWAL)
JUDGE

14.11.2018
sunita

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