

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

RSA No. 4112 of 2015(O&M)

Date of decision: 19.3.2018

Chamkaur Singh

....Appellant

VERSUS

Sukhdeep Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.S. Budhwar, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against consistent findings recorded by the Courts whereby suit filed by the appellant along with his co-plaintiff Gurdeep Singh seeking relief of declaration and permanent injunction by claiming the suit property to be Joint Hindu Family Ancestral Property in the hands of their father Ajmer Singh and further assailing the consent decree dated 22.09.2008 suffered by Ajmer Singh in favour of Sukhdeep Singh has been dismissed by the trial Court and findings recorded by the trial Court have been affirmed in appeal.

The present appeal has been preferred by one of the plaintiffs whereas brother of the appellant namely Gurdeep Singh appears to be satisfied with the decision of the Courts. The sole submission made by counsel for the appellant is that as the suit property in the hands of Sh. Ajmer Singh was Joint Hindu Family Ancestral Property in which the appellant had a right by way of birth, Ajmer Singh – defendant No.2 was

not competent to suffer decree dated 22.09.2008 in favour of Sukhdeep Singh, another son of Ajmer Singh.

The trial Court in para 2 of the judgment has taken note of averments of the plaintiffs including the pedigree table. As per the pedigree table, Bhagwan Singh was the grand-father and Gurdial Singh was the father of Ajmer Singh – defendant No.2. Gurdial Singh had four sons namely Ajit Singh, Joginder Singh, Ajmer Singh (defendant No.2) and Amar Singh.

It has been averred that Sh. Ajmer Singh received the property when he and his brother partitioned their agricultural land and abadi property. Out of entire property measuring 190 kanal, defendant No.2 had given 50 kanal land by release deed dated 12.01.2004 to defendant No.1, 49 kanal 2 marla land by release deed dated 16.12.2005 to plaintiff No.2 and 51 kanal 9 marla was given by consent decree dated 06.05.2006 to plaintiff No.1 (Gurdeep Singh). If we accept plea of the plaintiffs raised in para 2 to be correct on its face value, it becomes apparent that Ajmer Singh received land measuring 190 kanal on the basis of partition amongst four brothers, sons of Gurdial Singh. As soon as there is partition amongst Ajmer Singh and his brothers, the very plea of the appellant that suit property in the hands of Ajmer Singh was co-parcenary property is not acceptable. This apart, Ajmer Singh had already given different parcels of land to his three sons including the appellant/plaintiff, meaning thereby that the Joint Hindu Family was also no longer in existence. However, as soon as Ajmer Singh suffered decree in favour of defendant No.1, the same was sought to be challenged by the appellant and his co-plaintiff. In the given circumstances, the appellant failed to establish his plea that either the

suit property was Joint Hindu Family Co-parcenary Property or it was Joint Hindu Family Property of Ajmer Singh and his sons. This apart, once the appellant has received land measuring 49 kanal 2 marla by way of release deed dated 16.12.2005 executed by Sh. Ajmer Singh, his plea to challenge the decree suffered by Ajmer Singh in favour of defendant No.1 cannot be accepted even on equitable consideration. Counsel for the appellant has failed to advance any argument much less meaningful to challenge concurrent findings recorded by the Courts much less by raising a question of law that requires determination by hearing the contesting party.

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

MARCH 19, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no