

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

**RSA No.6244 of 2016 (O&M)
Date of Decision.04.12.2018**

Ram Kumar

....Appellant

Vs

Salochna and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ravi Sharma, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M .No.16375-C of 2016

For the reasons stated in the application, delay of 380
days in refiling of the appeal is condoned.

Application is allowed.

RSA No.6244 of 2016

The present regular second appeal is against the
concurrent finding of fact whereby the suit for possession and
permanent injunction as consequential relief has been dismissed.

The plaintiff asserted that Basheshar Dass, his father and
defendant No.2 to 4 inherited the land, which was coparcenary.
Basheshar Singh died in 1969 and after his death, plaintiff and
defendant Nos.2 to 4 inherited the same vide mutation No.1825.
Basheshar died intestate. Plaintiff and defendants No.2 to 4 thus had
1/5th share each and Laxmi Devi, widow of Basheshar Dass had also
1/5th share out of the suit land. Laxmi Devi was keeping sick and

could not have executed the impugned sale deed qua her share i.e. in respect of land measuring 47 kanals 18 marlas as she died on 09.05.2006.

The defendants opposed the suit and admitted the death of Laxmi Devi but stated that execution of the sale deed was her willful act. Plea of fraud asserted by the plaintiff was emphatically denied.

Plaintiff in support of the aforementioned pleadings examined himself and brought on record jamabandi, mutation and sale deed Ex.P1 to P3 whereas defendants examined as many as 9 witnesses including the attesting witness to establish due execution of the sale deed.

Mr. Ravi Sharma, learned counsel appearing on behalf of the appellant submitted that both the Courts below have failed to advert to the fact that the property was ancestral and Laxmi Devi could not have executed the sale deed except for legal necessity as her share could not have stated to be self-acquired. Defendants failed to prove passing of sale consideration. Witnesses to that effect were not consistent.

I am afraid aforementioned argument is not sustainable as best possible evidence for the plaintiff to belie the sale deed was Registrar before whom the sale deed was executed, which bore thumb impression and photograph of the executor. The ingredients of Order 6 Rule 4 CPC have not been proved nor the nature and character of the property as ancestral. In such circumstances, plaintiff miserably failed to discharge onus in laying claim to the estate of Laxmi Devi.

As an upshot of my finding, the concurrent finding of fact and law arrived by the courts below cannot be faulted with, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 04, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No