

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

RSA No.6390 of 2016 (O&M)

Date of decision:09.05.2018

Sukhdev Singh

... Appellant

Vs.

Gurnam Kaur (since deceased) through LR and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. P.K.S.Phoolka, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.16776-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 60 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA No.6390 of 2016 (O&M)

Appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts, whereby, suit claiming declaration by laying challenge to the transfer deed dated 15.12.2005 executed by defendant No.1-Gurnam Kaur in favour of defendant No.2-Gurbachan Singh in respect of land measuring 58 kanals 6 marlas, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

Mr. P.K.S. Phoolka, learned counsel appearing on behalf of the appellant-plaintiff submits that Kishan Singh was owner of the property and he had four sons. He had suffered a collusive decree in the year 1970 in favour of four sons qua land measuring 291 kanals 3 marlas. The suit property fell into share of his unmarried son Babu Singh and after his death, the same was inherited by Gurnam Kaur and mutation No.7069 was sanctioned in favour of Gurnam Kaur regarding the property of Babu Singh and Gurnam Kaur at the time of execution of transfer deed was about 92 years old and she was residing with respondent No.2. However, owing to that pressure and mis-representation, she was compelled to execute the aforementioned transfer deed. Appellant was none-else but brother of Babu Singh. The transfer deed was also effected in the name of other brother, i.e., Gurbachan Singh, therefore, it was bad in law. All these factors have not been taken into consideration by the Courts below, for, the property at the hands of Kishan Singh was ancestral.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Phoolka, for, on demise of Babu Singh, Gurnam Kaur became the owner of the property vis-a-vis share of Babu Singh. As per the decree of 1970, she was well within her rights to deal with the property in any manner she wanted to and had executed transfer deed in favour of one of her sons. The other son cannot have any grievance, for, Babu Singh had died issueless. The nature and character of the property being ancestral had not been proved on record.

Mere admission of one of the witnesses would not clothe the land to be ancestral. All these factors weighed in the mind of the Courts below while dismissing the suit.

The arguments of Mr. Phoolka, have not been able to bring the case within the realm of illegality and perversity enabling this Court to form different opinion than the one arrived at by the Courts below which are based upon the appreciation of oral and documentary evidence.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 09, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No