

RSA No.6792 of 2016 (O&M)

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

RSA No.6792 of 2016 (O&M)

Date of decision:29.05.2018

Gurcharan Singh

... Appellant

Vs.

Swaran Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Khunger, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.17700-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 10 days in filing the appeal, is condoned.

C.M. stands disposed of.

RSA No.6792 of 2016 (O&M)

The appellant-plaintiff has not been successful before both the Courts below in the suit seeking declaration for setting aside the registered transfer deed dated 13.07.2009 executed by defendant no.2 in favour of defendant no.1 in respect of the land measuring 37 kanals 9 marlas (hereinafter called as “suit land”).

The suit was filed on the premise that father of defendant No.2- Shamir Singh was the grand father of plaintiff and defendant No.1. He was the owner of suit land, therefore, the plaintiff had a right in the suit land by birth as the nature and character of the land was ancestral. Without any legal

necessity, defendant no.2 could not execute the transfer deed.

The defendants contested the suit and filed joint written statement. It was averred that suit land was self-acquired as the plaintiff had been taken care of, for, Jagir Singh had purchased two acres of land in the name of plaintiff, vide sale deed dated 16.12.1987. The nature and character of the land being ancestral was also emphatically denied.

Since the parties were at variance, the trial Court framed as many as eight issues including the issue of Relief. The respondent-plaintiff examined himself and tendered on record Ex.PW1/A, Ex.P1 to Ex.P11 and Mark P12. On the other hand, respondent-defendants examined himself as DW1 and brought on record Ex.DW1/A and Ex.D1. The trial Court on the basis of aforementioned evidence dismissed the suit and the appeal filed before the Lower Appellate Court also met with the same fate.

Mr.Sandeep Khunger, learned counsel for the appellant-plaintiff submits that the Courts below had not adverted to the documentary evidence to show that the land, subject matter of the transfer deed devolved upon from defendant no.2-Shamir Singh from his father, therefore, it was ancestral. No reasons of legal necessity have come forth for executing the transfer deed and therefore, it was not legal and liable to be set aside. The defendants have failed to prove on record the acquisition of the land on their own and thus, urges this Court for setting aside the findings under challenge as there is illegality and perversity.

I have heard the learned counsel for the appellant-plaintiff, appraised the impugned judgments and decrees of the Courts below and of

the view that there is no force and merit in the submissions of Mr. Khunger, for, as per paragraph 221 of Mulla Hindu Law 21st Edition, for the purpose of claiming right in the land/property, there has to be three generations and a person claiming right by birth should be fourth one. Even jamabandi for the years 2006-07, 2008-09 and 1993-94 only showed the ownership of the land, therefore, the land on devolution in favour of defendant no.2-Jagir Singh cannot be said to be ancestral.

In view of such situation, defendant no.2 could deal with the property in any manner he wanted to as has been done in the present case. The plaintiff has miserably failed to prove the transfer deed being suffered from infirmity and illegality or without any legal necessity.

The arguments of Mr. Khunger, being devoid of merit have not been able to bring the case within the realm of illegality and perversity, warranting interference in the concurrent findings of facts and law which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)

JUDGE

May 29, 2018

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