

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

**RSA-858-2016 (O&M)
Date of Decision:27.08.2018**

Sukhdev Singh

... Appellant

Versus

Gurnam Singh deceased through L.Rs.

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Nitin, Advocate for
Mr. Satish Goel, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Plaintiff, Sukhdev Singh filed a suit for declaration and permanent injunction and which was dismissed by the trial Court on 03.06.2010. Civil appeal preferred has also met the same fate vide judgment dated 14.10.2015 passed by the learned District Judge, Sangrur.

Resultantly, the plaintiff/appellant is in second appeal before this Court.

Counsel for the appellant has been heard at length and the pleadings on record have been perused.

In the considered view of this Court, there is no merit in the instant appeal and the same deserves to be dismissed.

Briefly case of the appellant/plaintiff was that previously his grandfather, Lal Singh was owner in possession of land measuring 91 kanals 3 marlas to the extent of 2/3rd share. After death of Lal Singh, defendant, Gurnam Singh along with his brother Chhota Singh inherited the 2/3rd share

of Lal Singh and as such, became co-owners in joint possession to the extent of 1/3rd share in the land. The land was held in the hands of the defendant as Joint Hindu Family ancestral and coparcenary property. Appellant claimed to have interest in the said property by birth. Defendant being '*karta*' of the Joint Hindu Family was stated to be managing the suit property. Case projected was that an oral family settlement had taken place between the parties and other brothers of the plaintiff/appellant about 5 years prior to institution of the suit, and in which plaintiff/appellant was given 1/12th share of land measuring 91 kanals 3 marlas i.e. the suit property and since then plaintiff was in cultivating possession of the suit property. It was pleaded that the revenue records however still existed in the name of the defendant and who by taking advantage and undue benefit wants to alienate the suit property. Against such backdrop the suit had been filed.

Suit was contested by the defendant/respondent by filing a written statement admitting that previously Lal Singh, grandfather was owner in possession to the extent of 2/3rd share of land measuring 91 kanals 3 marlas. Defendant claimed that he had inherited 1/3rd share in the property from his father i.e. Lal Singh. Plaintiff/appellant had already obtained his share and dis-associated himself from the Joint Hindu family and thus had no interest in the suit property.

Concurrent findings have been returned by the Courts below holding that no evidence had been led on record as to the mode and manner in which defendant, Gurnam Singh and his brother Chhota Singh had got the share previously owned by Lal Singh i.e. grandfather of the plaintiff/appellant. Plaintiff/appellant had not proved the mode as to whether

Gurnam Singh and Chhota Singh had got the suit land from Lal Singh either by way of decree, Will or natural succession. Likewise, no evidence had been led to prove that suit property was coparcenary/ancestral/Joint Hindu Family property. Plaintiff/appellant had not pursued the lis so as to trace source of the suit property and the mode of devolution of the property upon Gurnam Singh and Chhota Singh.

Plaintiff/appellant had set up a case as regards an oral family settlement having taken place 5 years prior in point of time and a share having come in his favour. Herein again, no evidence was led by the plaintiff/appellant to prove the oral family settlement. Under such circumstances, the decree of declaration sought by the plaintiff/appellant has rightfully been denied to him.

Plaintiff/appellant was also seeking relief of permanent injunction. On this aspect also, no evidence had been led by him in the shape of revenue entries to reflect him to be in cultivating possession of any part of the suit property. Injunction as such could not have been granted in his favour.

The judgments passed by the Courts below are well reasoned and based upon due appreciation of evidence.

No interference in the matter is called for.

Appeal is dismissed.

27.08.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |