

RSA No.43 of 2014 (O&M)

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

RSA No.43 of 2014 (O&M)

Date of decision:16.11.2018

Dharamvir Chadha

... Appellant

Vs.

Indervir Chadha and others

... Respondents

RSA No.3927 of 2013(O&M)

Munish Chadha

... Appellant

Vs.

Indervir Chadha and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

AMIT RAWAL J. (Oral)

C.M.No.121-C of 2014

For the reasons stated in the application which is duly supported by an affidavit, delay of 4 days in re-filing the appeal is condoned.

C.M. stands allowed.

C.M.No.122-C of 2014

The application is allowed, subject to all just exceptions. Legal representative of respondent No.4 as mentioned in the application is ordered

to be brought on record for the purpose of prosecuting the present appeal.a

C.M. stands allowed.

RSA Nos.43 of 2014 and 3927 of 2013 (O&M)

This order of mine shall dispose of two Regular Second Appeals bearing Nos.43 of 2014 and 3927 of 2013.

The appellant-plaintiff has not been successful in claiming the right in the property i.e. House no.186 Sector 19-A, Chandigarh on the basis of inheritance being ancestral/co-parcenary property.

It was alleged that Kahan Chand Chadha while in Pakistan died in the year 1943. He owned a house in Mohalla Wazirpura, Sialkot Pakistan and, in lieu of that Rehabilitation Department, allotted the house aforementioned, in favour of his son Pritam Dass Chadha. Defendant No.1 is the widow of Pritam Dass Chadha and out of the wedlock, three sons Dharamvir Chadha (plaintiff no.1) and Indervir Chadha (defendant no.2) and Ranbir Partap Chadha alongwith daughters were born. Defendant no.5 is the widow of Ranbir Partap Chadha. It was further alleged that the property at the hands of Pritam Dass Chadha was ancestral and therefore, except for legal necessity, the property could not have been bequeathed in the manner and mode.

In support of the aforementioned averments, plaintiff examined five witnesses and brought on record various documents, i.e. Ex.P1 to Ex.P5.

The defendants opposed the nature and character of the property to be ancestral. It was alleged that defendant no.1 was absolute

owner of the property, much less, the suit was not maintainable. Pritam Dass Chadha had transferred the house in the name of wife during his life time which continued to be recorded since 1958. It is not the case that the property was transferred by way of inheritance i.e. after the death of Pritam Dass Chadha.

The trial Court on the basis of aforementioned evidence, dismissed the suit and the appeal taken before the Lower Appellate Court was also dismissed.

Mr. Ravi Kant Sharma, learned counsel appearing on behalf of the appellant submitted that through the testimony of witnesses from the Rehabilitation Department, it has been proved on record that plot no.186 Sector 19-A, Chandigarh was allotted in lieu of the land owned by father of Pritam Dass Chadha, namely, Kahan Chand, left in Pakistan, therefore, it could not be treated as self-acquired property. His son and grand-children have a right in the property by birth. The law of succession in respect of ancestral property as per the Mulla's Hindu Law 21st Edition Para 221, is no longer res integra. Both the Courts below have abdicated and committed illegality and perversity in dismissing the suit.

I am afraid the aforementioned arguments are not sustainable in the eyes of law on account of the following reasons:-

i) Concededly, Pritam Dass Chadha, during his life time transferred the plot in favour of wife-Raj Karni in the year 1958, whereas, he died in 1995.

ii) In view of such situation, defendant no.1-Raj Karni as

per the provisions of Section 14(1) of Hindu Succession Act, had become the absolute owner.

iii) The suit, during life time of mother, was not maintainable as the Will would have become effective only after her death.

iv) Assuming, the property was ancestral in nature, Dharamvir Chadha was the “Third Gaeneration” in lineage and therefore, had no locus standi to assert the right by birth.

v) All these factors weighed in the mind of the Courts below and the Will was also not found to be suffering from suspicious circumstances enabling this Court to form a different opinion than the one arrived at and to open the line of succession .

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge 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.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 16, 2018
savita

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