

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

RSA No.1640 of 2017 (O & M)

Date of Decision:06.02.2018

Talwinder Singh

...Appellant

Versus

Gurcharan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aditya Dassaur, Advocate
for the appellant.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court.

Plaintiff had filed a suit claiming declaration that the plaintiff and the defendants are in joint possession of the property measuring 20 kanals and 1 marla and transfer deed executed by defendant No.1, his father in favour of defendant No.2, his brother dated 26.12.2008 is illegal, null and void and also prayed for a decree for permanent injunction restraining defendant No.1 from transferring/alienating the above said property.

Plaintiff claimed that the suit property in the hands of defendant No.1 is ancestral, Joint Hindu Family Coparcenary Property, which have devolved upon defendant No.1 from his ancestors. Plaintiff claimed that he has a right in the property by birth and, therefore, transfer deed executed on 26.12.2008 is illegal, null and void. Defendant Nos.1 and 3 filed joint written statement and contested the suit. It was pleaded that the property is not a joint Hindu Family Coparcenary Property as defendant No.1 had received the same through Will-testamentary document from his father and the plaintiff is not living with the family but is living in his in-laws house.

the property has come down from Ghanaia, grand father of defendant No.1 i.e. Gurcharan Singh father of the parties, therefore, it is proved to be ancestral and hence, the transfer deed is illegal, null and void. The learned trial Court further held that registered Will executed by Gian Singh in favour of Gurcharan Singh-defendant No.1 has not been proved on file in terms of Section 68 of the Evidence Act. However, learned trial Court partly dismissed the suit for injunction on the ground that the plaintiff has no right to restrain karta of the family from alienating the property.

Defendant No.1-Gurcharan Singh filed first appeal. Learned First Appellate Court after re-appreciating the evidence available on the file accepted the appeal and held that the property is not proved to be ancestral Joint Hindu Family Coparcenary Property.

Learned First Appellate Court has further held that the registered Will dated 05.08.1975 is not in issue before the Court as ownership of Gurcharan Singh pursuant to the Will dated 05.08.1975 is not being disputed.

In the present case, plaintiff claims that property is ancestral Joint Hindu Family Coparcenary Property, whereas the evidence led by the plaintiff does not prove this fact. The plaintiff himself when appeared in the witness-box admitted that he joined Army in the year 1997 and took retirement in the year 2012. He further admits that after retirement he joined private service. He admits that his marriage took place in the year 2005 and he is residing in village Lodhipur with his in-laws. Remaining members of the family are living in village Bhaowal, Post Office, Nurpur Bedi. It is further admitted by him that he was turned out of the house by the father and was disinherited of the property. Hence, the case set up by the plaintiff that he is member of the Joint Hindu Family stands belied.

receive the property from his grand-father through registered Will dated 05.08.1975. It is further not in dispute that defendant No.1 is recorded as exclusive owner of the property. Plaintiff has neither pleaded nor proved how coparcenary as alleged came to be formed. Coparcenary is a much narrower body than joined Joint Hindu Family. Had any coparcenary existed, Gian Singh grand-father could not have executed the Will in favour of his son Gurcharan Singh because Gurcharan Singh then would have been owner of the property by birth.

Still further, the plaintiff has not been residing with the family and is living with his in-laws. Hence, there is no Joint Hindu Family.

Plaintiff has further failed to establish that the property could not be transferred by the father to the son. Rather opposite is proved. Gian Singh, grand-father had bequeathed his property in favour of defendant No.1- Gurcharan Singh his son. Now Gurcharan Singh has transferred the property through registered transfer deed in favour of the son who is living with him.

In view of the aforesaid discussion, this Court does not find any error in the judgment passed by the learned First Appellate Court dismissing the suit filed by the plaintiff.

Accordingly, regular second appeal is dismissed.

06.02.2018
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(ANIL KSHETARPAL)
JUDGE

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