

**C.M.No.4689-C of 2018 in/and
RSA No.2126 of 2017 (O&M)**

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

**C.M.No.4689-C of 2018 in/and
RSA No.2126 of 2017 (O&M)
Date of decision:02.04.2018**

Ram Charan Sharma and another

... Appellants

Vs.

Dinesh Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J.P.Sharma, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.4689-C of 2018

For the reasons stated in the application which is duly supported by an affidavit, order dated 22.03.2018 is recalled and the appeal is restored to its original number and appeal is taken on board for hearing today.

C.M. stands allowed.

RSA No.2126 of 2017 (O&M)

The appellant-plaintiffs are in Regular Second Appeal against the judgment and decree dated 09.01.2017 rendered by the Lower Appellate Court, whereby, suit of the plaintiffs decreed by the trial Court, vide judgment and decree dated 23.09.2013, had been set aside, resulting into its dismissal.

The appellant-plaintiffs instituted the suit for permanent and mandatory injunction challenging the release deed dated 28.01.2005 executed by Pyara Singh in favour of defendants No.1 to 9, i.e., grandsons of Pyara Singh on the premise that nature and character of the property at the hands of the Pyara Singh was ancestral, therefore, he could not alienate the property except for legal necessity. The witness of the release deed was one Kanwar Singh who was not resident of the village that itself was a pointer for setting aside the release deed.

In the joint written statement filed by defendants No.1, 2, 4 to 7, 10 to 12 and 15, it was stated that one Sethu son of Tula was ancestor of the parties to the suit. He had three sons namely, Jeev, Lalji and Girdhari, who died issueless. Jeev had one son Ganga Sahai while Lalji had one son Jai Kishan. It was further averred that Ganga Shai had one son Sheonath and one daughters Jamna while Jai Kishan had two sons namely Nathu alias Natha and Heera Lal. It was also stated that Heera Lal had one son Parphu and one daughter Devki while Nathu had one son Pyara alias Pyara Singh. It was also stated that parties to the suit were descendants of Pyara Singh. Sheonath had inherited some land from his father. Sheonath had declared to give his land measuring 15 bighas 12 biswas to Pyara Singh as a gift. However, Pyara Singh got the gift deed executed in favour of his son Ram Charan, plaintiff no.1 vide gift deed dated 29.01.1960. The land measuring 69 kanals 2 marlas was allotted to plaintiff no.1 in lieu of land measuring 15 bighas 12 biswas during consolidation. After the death of Sheonath, the

property left by him was succeeded by his sister Jamna Devi, thus, Jamna Devi was owner in possession of land measuring 61 kanals 11 marlas. It was also stated that land measuring 69 kanals 2 marlas and 61 kanals 11 marlas was treated as joint family property from the beginning. However, the entries in the revenue record in respect of land measuring 69 kanals 2 marlas and 61 kanals 11 marlas were recorded in the name of plaintiffs no.1 and 2 and defendants no.10 and 11, respectively. Plaintiff no.1 started asserting his adverse possession over the land measuring 69 kanals 2 marlas. As a result thereof, oral settlement was effected between all the family members in the year 1995 in which it was resolved that plaintiff no.1 will transfer 1/4th share in the land measuring 69 kanals 2 marlas in favour of defendant no.12 Vinod Kumar and would be absolute owner of the land measuring 51 kanals 15 marlas out of the said land and will not claim any right, title or interest in any other property of the family. Plaintiff no.1 Ram Charan got transferred his 1/4th share in the suit property in favour of defendant no.12 Vinod Kumar in civil suit no.1515 of 1995 titled as Vinod Kumar Vs. Ram Charan decided on 16.08.1995, thus, Ram Chanran had no right or title in the property. It was also stated that plaintiff no.2 had 1/6th share in the suit property as per the terms of the family settlement. It was denied that Pyara Singh was an old, illiterate and simpleton person and the release deed under challenge was executed by him by fraud and without reading the contents of the same.

The plaintiffs examined PW1-Om Parkash Lambardar, PW2-Jai Parkash, PW3-Ishwar Singh and PW4- Raj Kumar who brought on record the jamabandi for the year 2000-01, Ex.P1, mutation Ex.P2, release deed, Ex.P3 and mutation in Punjabi Ex.P4.

On the other hand, defendants examined DW1- Prem Devi, DW2- Kanwar Singh, DW3- Pawan Kumar, DW4-Indraj Singh-Clerk in Government Senior Secondary School Bhungarka, who brought on record the admission and withdrawal register of the school as Ex.DW4/A to Ex.DW4/E and closed the evidence.

The trial Court decreed the suit, but the Lower Appellate Court reversed the findings on the premise that appellant-plaintiffs have failed to discharge the onus to prove the nature and character of the property being ancestral.

Mr. J.P.Sharma, learned counsel appearing on behalf of the appellant-plaintiffs submitted that judgment and decree of the Lower Appellate Court is liable to be set aside as the contents of the release deed revealed that the nature and character of the property was ancestral, therefore, the onus to prove the nature and character had already been discharged. No separate documentary evidence was required to be brought on record. Even otherwise, the defendants admitted the nature of the property and that was enough for the trial Court for decreeing the suit but the Lower Appellate Court has not adverted to the aforementioned fact, thus, there is illegality and perversity in the findings under challenge.

The revenue record proved the nature and character of the property to be ancestral. The documents, jamabandi-Ex.P1 and mutation-Ex.P4 are also testimony of the same. Though legal necessity was liable to be set aside as the judgment and decree of the trial Court was based upon the preponderance of evidence.

I have heard the learned counsel for the appellant-plaintiffs, 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. Sharma, for, mere admission in the document would not discharge the onus upon a person alleging the nature and character of the property to be ancestral. The aforementioned view of mine is derived from the ratio decidendi culled out in **Gurmail Singh Vs. Rajbir Singh and another 2014(4) RCR (Civil) 397** and **Tehal Singh and another Vs. Shamsher Singh (since deceased) through LRs 2016(2) L.A.R.87.**

In my view, the appellants have not been able to discharge the onus as per the provisions of Section 101 of Indian Evidence Act by bringing on record the excerpt. The mutation Ex.P4 did not reveal that the suit property was inherited and succeeded from 4th generation by a person namely Pyara Singh. Jamabandis brought on record were also not helpful in the absence of lineage, therefore, the property at the hands of Pyara Singh had not been proved to be ancestral and in the absence of the same, he could deal with the property in any manner and mode he wanted to. The whole basis of challenging the release deed was on the basis of lineage which had

not been proved, in my view, the Lower Appellate Court rightly reversed the findings of the trial Court.

As an upshot of my observations, I do not find any illegality and perversity in the findings of the Lower Appellate Court 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.

The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 02, 2018
savita

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