

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-2242-2017(O&M)
Date of Decision: 19.09.2018

Rajbans Kaur

--Appellant

Versus

Waryam Singh & others

--Respondents

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

Present:- Mr. S.K. Arora, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

Plaintiff-appellant is in second appeal before this Court having remained unsuccessful in both the courts below.

Brief facts of the case are that appellant filed a suit for declaration on the averments that she is real daughter of defendant no.1 Waryam Singh and step sister of defendants no.2 and 3. Mother of the appellant namely Sukhwinder Kaur died and thereafter father married again with Malkiat Kaur and from such wedlock defendants no.2 and 3 were born. Waryam Singh, father of the plaintiff-appellant was owner in possession of suit land measuring 61 kanals 8 marlas. Waryam Singh defendant was stated to be under the influence of his second wife and under such circumstances got executed two transfer deeds in favour of defendants no.2 and 3. One transfer deed was dated 30.10.2007 and on the basis of which mutation no.7723 was also sanctioned. A second transfer deed was also executed and on the basis of which mutation no.4120 was sanctioned in favour of defendants no.2 and 3. It was the case of the plaintiff-appellant that such transfer deeds and mutations are illegal, null and void and would have no binding effect on her rights. It was claimed that the suit land which was subject matter of the two transfer deeds was ancestral property in the

hands of defendant no.1 Waryam Singh. It was pleaded that Waryam Singh who was *Karta* of the family had no legal right to alienate the suit land without any legal necessity.

Suit was contested by the defendants. The suit property being ancestral in nature was denied and a stand was taken that it was in fact self acquired. The assertion as regards defendant no.1 being under the influence of his second wife was also categorically denied.

Suit filed by the plaintiff was dismissed by the Trial Court on 17.12.2014 and a civil appeal having been preferred has met the same fate vide judgement dated 16.12.2016 passed by the learned Additional District Judge, Ferozepur.

The sole contention raised by counsel for the appellant is that defendant/respondent Waryam Singh in his cross examination had admitted the suit land to be ancestral property and as such the appellant was under no obligation to prove the nature of the property. It is argued that the courts below have not appreciated such aspect and whereby rights of the plaintiff-appellant being daughter of Waryam Singh in the ancestral property have been denied. No other point was urged.

Having heard counsel for the appellant at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

It is a case where the plaintiff-appellant had sought a declaration against the transfer deeds executed by defendant no.1 in favour of his daughters defendants no.2 and 3. Entire case set forth by the plaintiff-appellant was that the suit property was ancestral and as such, her father could not have denied the rights of the daughter born out of the first

wedlock. The plaintiff-appellant had to stand on her own legs and had to prove by leading cogent and conclusive evidence that the suit property/land was ancestral in nature. It has not been controverted that the only evidence adduced on record were certain *Jamabandis* which at best revealed that Waryam Singh had inherited the property in question along with his two brothers from his father Ujagar Singh. The requirement in law that Waryam Singh had inherited the property from four male lineal descendants i.e. up to four degrees on the paternal side was not proved by leading any evidence. Any deposition made by Waryam Singh defendant-respondent in his cross examination as regards the suit property/land being ancestral or coparcenary would not be sufficient to prove the nature of the suit property and the same could have been determined only on the basis of evidence adduced on record.

The transfer deeds that were under challenge have already been acted upon inasmuch as mutation stands sanctioned. Waryam Singh, who is himself the author of the transfer deeds has not at any point of time laid a challenge to the transfer deeds in favour of his daughters born out of the second wedlock.

In view of the above, no basis for interference is warranted in the matter by this Court in second appeal.

Appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

19.09.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No