

105

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

**RSA No.2276 of 2017 (O&M)  
Date of Decision: 03.10.2018**

**BACHHITTAR SINGH**

**.....Appellant**

**Vs**

**GURBACHAN KAUR AND OTHERS**

**....Respondents**

**CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present:Mr. Kewal Krishan, Advocate for  
Mr. Premjit Kalia, Advocate  
for the appellant.

\*\*\*\*

**RAJ MOHAN SINGH, J.**

**CM No.5555-C of 2017**

For the reasons mentioned in the application, the same is allowed. Delay of 3 days in re-filing the present appeal is condoned.

**CM No.5557-C of 2017**

Prayer made in this application is for bringing on record the legal representatives of deceased/respondent No.3- Kulwinder Singh, who died on 09.02.2008.

For the reasons mentioned in the application, the same is allowed and the legal representatives of deceased Kulwinder

Singh as shown in para no.2 of the application are ordered to be brought on record, subject to all just exceptions.

**RSA No.2276 of 2017 (O&M)**

[1]. Plaintiff is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and joint possession.

[2]. Brief facts of the case are that the plaintiff filed a suit for declaration and joint possession to the effect that sale deed dated 21.06.2006 was illegal, null and void and was liable to be set aside. Plaintiff claimed that the property in question was ancestral coparcenary property of the plaintiff and defendant No.3-Kulwinder Singh. Plaintiff claimed that he along with aforesaid Kulwinder Singh were the coparceners governed by the Hindu Law and constituted Hindu joint family. Land measuring 16 *Marlas* out of total land measuring 38 *Kanals* 13 *Marlas* was the coparcenary property and the defendant No.3-kulwinder Singh sold the same to defendants No.1 and 2 without any legal necessity and without any consideration. The aforesaid act of transfer was claimed to be not an act of good management by the *Karta* of joint Hindu family. It was further asserted by the plaintiff that defendant No.3 was not competent to alienate the property except for legal necessity and, therefore, sale deed dated 21.06.2006 executed by defendant

No.3 in favour of defendants No.1 and 2 was sought to be declared null and void.

[3]. The entire thrust of the litigation rested upon the evidence whether the land is ancestral coparcenary property or not?

[4]. Defendants contested the suit thereby claiming that the suit land was not ancestral and coparcenary property of the plaintiff and defendant No.3, rather defendant No.3 was exclusive owner of the suit property and the same was his self-acquired property. He sold the property to defendants No.1 and 2 for valuable consideration as the sale deed was on account of legal necessity and for good management of the family affairs.

[5]. Both the Courts below have found that the property in question was not proved to be ancestral property. It was incumbent upon the plaintiff to prove nature of property being ancestral. Firstly, the plaintiff has to prove that the property have come to defendant No.3 only by descendance i.e. through four male lineal descendent and the same had not been partitioned amongst them.

[6]. Perusal of the record would show that the plaintiff has not led any evidence to the aforesaid fact, rather it has come on record that the property in question had devolved upon Charan Singh through a Will dated 11.08.1978 vide mutation No.5301

Ex.PW-13/A. The property in the hands of defendant No.3-Kulwinder Singh was not ancestral property.

[7]. It is a settled principle of law that mere assertion in the plaint or admission if any, made by the defendant in respect of ancestral nature of the property is of no consequence. The ancestral nature of the property has to be proved in terms of excerpt, pedigree table and as per requirement of Volume I, Chapter 9 Rules 5 and 6 of High Court Rules and Orders. As per para no.232 of Mullah's Law, the plaintiffs, who have asserted ancestral nature of suit property have to prove the same that the property was devolved upon them through four male lineal descendant i.e. three generations, in essence, they are the fourth generation. Even admission made by the defendants without the aforesaid material would not change the legal position. Since plaintiff has miserably failed to adduce material and lawful evidence on the aforesaid aspect, therefore, the property in question cannot be presumed to be ancestral coparcenary property.

[8]. The second contention with regard to mental state of health of defendant No.3/Kulwinder Singh was also discarded on the ground that no evidence has come on record to prove that on particular date i.e. 21.06.2006, defendant No.3 was not in fit state of mind and no consideration was passed over to

defendant No.3 from defendants No.1 and 2. The statement of Dr. Ravinder Mohan PW-3, in the context of Ex.P-1 was not relatable to the alleged mental state of health of Kulwinder Singh as on 21.06.2006, rather it was out door patient slip dated 23.09.2006. Even no evidence was led by the plaintiff that defendant No.3/Kulwinder Singh was hospitalized for any treatment. No evidence to the contrary was led in the form of any statement of officials from Registry office that the executant of the sale deed was not in a fit state of mind.

[9]. Over all assessment of the case done by both the Courts below was dependent upon the factual position involved in the case. The appreciation done by the Courts below cannot be faulted with. No re-appreciation can be made by this Court in the Regular Second Appeal. Consequently, the findings of facts recorded by the Courts below cannot be held to be the result of any misreading of evidence or suffered with any perversity. No law point worth cognizance is involved in the present appeal. The same is accordingly dismissed in *limine*.

October 03, 2018

**(RAJ MOHAN SINGH)**  
**JUDGE**

*Atik*

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No