

139

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

**RSA-274-2017(O&M)
Date of decision : 21.11.2018**

Bharpai(deceased) through LRs

..... Appellant

versus

Anarli alias Ghogri and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Arun Jain, Sr. Advocate
with Mr.Amit Jain,Advocate
for the appellant..

AMIT RAWAL, J. (ORAL)

CM-13927-C of 2018

This is an application for impleading legal heirs of deceased appellant Bharpai who is stated to have died on 30.07.2018.

For the reasons recorded in the application,the same is allowed subject to all just exceptions. Persons mentioned in para 2 of the application are impleaded as her legal heirs. Registry to make necessary amendment in the memo of parties.

RSA-274-2017

Appellant-plaintiff has not been successful to be owner in possession to the extent of ½ share in respect of suit land measuring 236 kanals 13 marlas by laying challenge to the gift deed dt 8.7.1959 executed by late Ganga Sahai in favour of defendant No.2- son of defendant no.1 to be result of fraud and collusion, misrepresentation and subsequent mutation.

It was alleged that Ganga Sahai had two daughters, appellant-plaintiff and Anarli alias Ghogri- defendant No.1. They were co-parceners having a birth right in the suit property. In such manner he could not have executed the gift deed without any legal necessity in favour of defendant No.2. Defendants opposed the suit on the premise that the defendant no.2 was none else but the maternal grandson of Ganga Sahai. A similar suit in the year 1978 was filed but the same was dismissed vide judgment and decree dated 5.11.1980 as during the life time of father the same was not maintainable. Even ancestral property had not been partitioned. The trial court on the basis of the evidence dismissed the suit and appeal filed before the Lower Appellate Court was also dismissed.

Mr. Arun Jain, learned Senior counsel appearing for the appellant submitted that the plea taken in the written statement was that the respondent No.2 was adopted by Ganga Sahai and it is in this background that gift deed was executed. Amendment of the written statement to wriggle out of the stand of adoption was rejected, thus, for all intent and purposes no explanation has come forth as to how and in what circumstances Ganga Sahai had gifted the entire aforementioned property in favour of defendant No.2. The property at the hands of Ganga Sahai was ancestral and, therefore, the daughters had the right by birth.

I have heard learned counsel for the appellant and gone through the record and am of the opinion that as Ganga Sahai died in the year 1985 and gift deed was executed in 1959, at that relevant time there was no amendment in Section 6 of the Hindu Succession Act giving right to the daughter in ancestral property. Even otherwise the nature and character of the property as ancestral has not been established. From the date of

execution of gift deed till 1985, Ganga Sahai did not challenge the same. In the previous round of litigation also there was a finding with regard to the gift deed.

I do not subscribe to the arguments of learned counsel as the same have not been able to bring the case within the realm of illegality and perversity enabling this Court to form a different opinion other than the one arrived at by the Courts below. No ground for interference is made out.

Appeal is dismissed.

(AMIT RAWAL)
JUDGE

21.11.2018
sunita

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