

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

RSA No.3251 of 2017 (O&M)

Date of Decision:- 31.10.2018

SUNITA

.....Petitioner

V/S

NATHU SINGH AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present : Mr. A.S.Tewatia, Advocate
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the judgment and decree of the lower appellate court vide which the judgment and decree of the trial court dated 02.12.2015, decreeing the suit, has been set aside. Appellant-plaintiff filed the suit for declaration with consequential relief of permanent injunction challenging the relinquishment deed on the premise that by virtue of an amendment in Section 6 of the Hindu Succession Act, daughter has equal right in the co-parcenary property of the father.

The aforementioned suit was contested by the defendant denying the nature and character of the property to be ancestral.

On the preponderance of the evidence PW3/A, trial Court decreed the suit but the lower Appellate Court reversed the finding.

Mr. A.S.Tewatia, learned counsel appearing on behalf of the appellant submits that even if the ancestral property is Willd away without

any challenge by any other coparcenar, the nature and the character of the property will be ancestral. Though the revenue excerpt Ex. PW3/A having brought on record to show the pedigree table, Nathu had inherited the property from Ami Singh and plaintiff being grand daughter was entitled to the aforementioned share. Thus, the finding of the lower Appellate Court is not sustainable.

I have heard the learned counsel for the appellant and of the view that there is no force and merit as on perusal of Exhibit PW3/A shown to this court during the course of hearing, the property had devolved from Ami Singh to Nathu Singh and Suba Singh. Nathu is none else but the father of the plaintiff. Therefore, the plaintiff is third generation in lineage whereas it should have been 4th as per para 221 of 21st Edition of Hindu Mulla Law.

I am in agreement with argument of Mr. A.S.Tewatia that the finding of the lower Appellate Court in treating the property inherited by Will to be non-ancestral, is not correct as the character and nature of the property even if it Willed, would remain intact. But, in view of the foregoing reasons, plaintiff has not been able to prove the 4th Generation, therefore, would not right by birth. No ground for interference is made out.

Appeal is dismissed while affirming the judgment and decree of the lower Appellate Court.

31 October, 2018

Rajeev/Himanshu

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned Yes

Whether reportable No