

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

RSA No.330 of 2017 (O&M)

Date of decision:09.05.2018

Sandeep and others

... Appellants

Vs.

Ramesh Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Abhinav Sood, Advocate, for
Mr. Vikram Singh, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-plaintiffs are in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for declaration with consequential relief of joint possession and permanent injunction by challenging the sale deeds bearing No.758 and 759 executed by defendant No.4 (vendor) in favour of defendants No.1 to 3 (vendees) being null, void and ineffective and mutation bearing Nos.2193 dated 5.7.2005 and 4302 dated 9.7.2005, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

Learned counsel for the appellant-plaintiffs submits that Surender Kumar/defendant No.4 could not have alienated the suit property in favour of defendants No.1 to 3, for, property in dispute at the hands of Surender Kumar was ancestral and in this regard, umpteen number of

documentary evidence i.e.. Ex.P1 to Ex.P39 has been placed on record, though the defendants had also placed on record Ex.D1 to Ex.D15. The trial Court has committed illegality and perversity in not advertng to the aforementioned evidence, for, nature and character of the property as per the evidence has been proved to be ancestral, therefore, the plaintiffs had right in the property by birth. Alienation at the hands of Surender Kumar was not for legal necessity, therefore, the sale deeds were liable to be set aside.

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. Sood.

From the evidence brought on record, it is evident that the property in the hands of defendant no.4-Surender Kumar came to him from different persons and not only from his father or father's father or father's father's father. This fact has been noticed by the trial Court in paragraph 17 of the judgment, for, certain property had been acquired by way of gift deeds dated 6.10.1959 and 5.4.1968. For the purpose of proving the property to be ancestral, excerpt is required to be proved that Ghasita was the third generation who succeeded to the property, therefore, the plaintiffs, being fourth generation, could claim the interest having right by birth. Since plaintiffs miserably failed to prove the property being ancestral at the hands of Surender Kumar, rightly so, it has been treated as self-acquired property, therefore, he could deal with the property in any manner he wanted to. It is common practice amongst the sons to challenge the action of father, that too during his life time. It is settled law that such action during life time cannot

be permitted.

The arguments of Mr. Sood, have not been able to bring the case within the realm of illegality and perversity enabling this Court to form different opinion than the one arrived at by the Courts below which are based upon the appreciation of oral and documentary evidence.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

May 09, 2018
savita

(AMIT RAWAL)
JUDGE

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