

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

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RSA 2833 of 2018 (O&M)
Date of decision: 08.10.2018

Suraj minor through his guardian Smt. Shimla Rani *Appellant*

Versus

Baldev Raj *Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Alok Mittal, Advocate
for the appellant

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against judgment and decree dated 13.03.2018 passed by the Additional District Judge, Fatehabad whereby appeal preferred by the respondent/defendant against judgment and decree dated 30.05.2015 passed by the trial Court was accepted, judgment and decree passed by the trial Court were set aside and suit filed by the appellant/plaintiff seeking declaration to challenge release deed No. 276 dated 05.05.2008, executed by Krishan Chand *alias* Krishan Lal in favour of the respondent/defendant, his brother, being without legal necessity and consent of the plaintiff, has been dismissed.

Suraj minor son of Hans Raj and grand son of Krishan Chand *alias* Krishan Lal filed the instant suit through Simla Rani, his mother to challenge the aforesaid release deed executed by his grand father in favour of Baldev Raj, brother of Krishan Chand primarily on the ground that suit land was ancestral property in the hands of Shri Krishan Chand *alias*

Krishan Lal in which the plaintiff acquired right by way of birth, therefore, Krishan Chand was not competent to execute the release deed which is without legal necessity.

The trial Court relied upon mutation No. 553 dated 05.09.1998 Ex.P3 to accept contention of the plaintiff/appellant that suit land was ancestral coparcenary property in the hands of Shri Krishan Chand *alias* Krishan Lal, therefore, release deed executed by him in favour of Baldev Raj is not legally tenable. However, the Court in appeal, in para 11 of the judgment, has noticed that mutation No. 553 Ex.P3 shows that Krishan Chand *alias* Krishan Lal had inherited disputed property from his father Buta Ram and mutation clearly shows that property came to Ram Pyari, widow of Buta Ram and Krishan Lal, Shiva Ditta and Baldev Raj sons of Buta Ram on the basis of registered Will No. 70 dated 23.07.1998 executed by Buta Ram in favour of his wife and sons excluding Bhajan Kaur, his daughter.

Perusal of copy of mutation Ex.P3 supplied by counsel for the appellant during course of hearing makes it apparent that mutation was sanctioned on the basis of testamentary succession to the estate of Shri Buta Ram in favour of his widow and three sons, to the exclusion of one of the class I heirs of Buta Ram, namely Bhajan Kaur. As Shri Krishan Chand *alias* Krishan Lal inherited property from his father on the basis of testamentary succession, it became his self acquired property, therefore, the appellant cannot be heard to say that suit property was coparcenary in the hands of his grand father and he acquired right in the same, by birth.

No sooner, plea of the appellant in this regard is rejected, he has no case to

challenge the disposition made by Shri Krishan Chand alias Krishan Lal. In this view of the matter, it can safely be held that the error committed by the trial Court has rightly been rectified by the Court in appeal. The appellant has miserably failed to make out a case that the judgment and decree passed by the Court in appeal suffer from an illegality much less perversity, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed *in limine*. No order as to costs.

(Rekha Mittal)
Judge

08.10.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No