

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

RSA No.6235 of 2014 (O&M)

Date of Order:27.04.2018

Sher Singh

..Appellant

Versus

Har Lal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.L.Verma, Advocate,
for the appellant.

Mr. Virendra Rana, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiff filed a suit for declaration with consequential relief of joint possession and permanent injunction against his father and brothers. Plaintiff claims that relinquishment deed executed and registered by father-defendant no.1 in favour of his three sons i.e. defendant nos.2, 3 and 4 are not binding on his rights as the property is ancestral in nature.

In the written statement, defendant no.1 contested the claim and pleaded that the plaintiff has already been given his share in the property as he was paid Rs.20 lacs by way of cheque and was given a residential plot and a shop. It has further been pleaded that on the residential plot a house has been constructed by the plaintiff which is worth more than Rs.2 crores.

Both the courts below after appreciation of the evidence available on the file, dismissed the suit filed by the plaintiff.

This court has heard learned counsel for the parties at length

and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellant has submitted that defendant no.1 when appeared in the evidence admitted that the land was ancestral in nature. He submitted that in view of the aforesaid admission, read with the contents of the relinquishment deed, it is proved beyond doubt that the property is ancestral in nature. He submits that therefore the courts have wrongly returned a finding that the plaintiff has not proved that the property is ancestral in nature.

On the other hand, learned counsel for the respondents has pointed out that the assertions made by the father-defendant no.1 in the written statement and has also drawn the attention of the court to the statement of father Har Lal in evidence, which reads as under:-

“It is also submitted that the defendant no.1 had also given a cheque of Rs.20 lacs in favour of the plaintiff out of the sale consideration of his anotehr land situated within the revenue estate of village Narsinghpur Tehsil and District Gurgaon, besides it the defendant no.1 also given residential plot and constructed house in Rect. No.14 Killa No.1 measuring 1 kanals which values is more than Rs.Two Crores. It is also submitted that the defendant No.1 gave one shop measuring 9'x20' on Khandsa Road out of self acquired property of defendant No.1 comprising of Rect. No.12 Killa No.25/1/1/2 within the revenue estate of village Narsinghpur Tehsil and District Gurgaon which is on road i.e. Khandsa Road.”

He has further submitted that this part of the statement given by defendant no.1 was not challenged in cross-examination. He submitted that in view of the unchallenged statement, partition of the property in between the family members is established and, therefore, once the property has been divided amongst family members, the property does not retain character of ancestral property. He has further submitted that the plaintiff has not produced any evidence to prove that the property was ancestral in nature. He submitted that admission of Har Lal, defendant no.1 would not improve the case of the plaintiff as it was the duty of the plaintiff to prove by producing sufficient evidence that the property was ancestral in nature.

As regards first argument of learned counsel for the appellant, it is relevant to note that the plaintiff has not produced any evidence that the property, which is subject matter of relinquishment deed retain the character of ancestral property after property was divided amongst the family members. Plaintiff has led no evidence to prove that the assertions made by the father in the written statement supported by evidence led were incorrect. Even if the property was ancestral in nature at one point of time, once the property was divided and sons including the plaintiff were given their respective shares, the property does not continue to be ancestral.

In view of the aforesaid, there is no good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

April 27, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No