

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM No.7620-C-2018 in/and
RSA No.2994 of 2018 (O&M)
Date of Decision : 04.07.2018

Krishan Kumar and others

..... Appellants

Versus

Dalbir Singh

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Vivek Khatri, Advocate
for the appellants.

AJAY TEWARI, J. (Oral)

CM No.7620-C-2018

This is an application for bringing on record the legal representatives of the deceased-Smt. Rupa Devi.

For the reasons recorded in the application, the same is allowed and the persons mentioned in the paragraph No.2 of the application are impleaded as legal representatives of the deceased-Smt.Rupa Devi subject to all just exceptions.

Registry is directed to make necessary corrections in the memo of parties.

RSA No.2994 of 2018

This appeal has been filed against the judgments of the Courts

It may be mentioned that the appellate Court has slightly modified the judgment but on principle both the Courts are concurrent. The respondent had filed a suit alleging that the Will by which his father had bequeathed his entire property in favour of the appellants is forged and in any case does not affect his right since the property was ancestral in the hands of the father. Both the Courts below held that the property was ancestral but further went on to say that the execution of the Will was duly proved and limited the effect of the Will to the share of the father. Against the finding about the validity of the Will the respondent has not filed any appeal and consequently that finding stands. The only issue is whether the property was ancestral. To come to the conclusion that the property was ancestral both the Courts relied upon a previous suit between the parties where it was held that the property was ancestral and which finding had attained finality. Once an inter party dispute about the nature of the property had attained finality the same can not be reopened in a subsequent suit. In the circumstances, the finding that the property was ancestral is not liable to be interfered with.

Learned counsel for the appellants has further argued that once the respondent was not proved to be in possession he could not maintain a simple suit for declaration. In this regard it must be remembered that once it has been held that the property was ancestral it meant that the respondent was a co-sharer in the property and it is trite to say that the possession of one co-sharer is possession of all co-sharers.

Resultantly, no fault can be found with the frame of the suit.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

**(AJAY TEWARI)
JUDGE**

04.07.2018

Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No