

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

RSA No.3496 of 2017

Date of Decision.27.03.2018

Sunita and others

.....Appellants

Vs

Smt. Saroj and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Lather, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs are aggrieved of the judgments and decrees of both the Courts below whereby the suit for declaration and permanent injunction challenging the sale deed bearing No.4329 dated 4.3.2010 executed by defendant No.3 Wazir Singh i.e. father of the plaintiffs in favour of defendant No.1 and 2 with a consequential relief of permanent injunction has been dismissed.

The suit was instituted by the plaintiffs on the premise that the suit land at the hands of Wazir Singh was ancestral and the same could not have been sold except for personal necessity.

The aforementioned suit was contested by defendant No.1 and 2 on the ground that it was self-acquired property of Wazir Singh and he had sold it for a valuable consideration but colluded with the plaintiffs as he also sold some land in favour of others but for that no objection was raised by the plaintiffs. Defendant No.3 did not appear and therefore, proceeded ex parte on 22.03.2011.

The trial Court on preponderance of the evidence brought on

record by the respective parties dismissed the suit which has been upheld by the lower Appellate Court.

Mr. Sandep Lather, learned counsel appearing on behalf of the appellants-plaintiffs submitted that Wazir Singh could not sell the property without noticing the right and interest of the plaintiffs i.e. children of Wazir Singh, for, they had right by birth in the suit property owing to the nature and character of the suit property being ancestral. The factum of the property being ancestral had been admitted by defendant No.1, therefore, the plaintiffs discharged from the obligation of proving the nature of the property as ancestral property, thus, urges this Court for setting aside the judgments and decrees under challenge.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Lather, for, in order to establish the nature and character of the property being ancestral, original excerpt is required to be proved on record to show that Wazir Singh had acquired the property from his fore-fathers and being 4th generation in lineage had right by birth. Even the right by birth to daughters has been given w.e.f. 09.03.2005 as per amendment caused in Section 6 of the Hindu Succession Act, which shall not apply retrospectively. No doubt, the sale deed aforementioned was executed in the year 2010 but the plaintiffs shall have right in the property had they been able to prove the nature and character of property as ancestral. Having failed to do so, they had not been able to discharge the onus as per Section 101 of the Indian Evidence Act.

In view of the aforementioned, I do not find illegality and perversity in the judgments and decrees passed by the Courts below, much

less, no substantial question of law arises for determination by this Court.
No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 27, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No