

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 3356 of 2018(O&M)
Date of Decision: 21.12.2018**

Mawasi (deceased) through his LRs

---Appellant

versus

Jhuttar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. J.S.Yadav, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for declaration with consequential relief of permanent injunction filed by Mawasi son of Shib Lal (since deceased) claiming that land measuring 12 kanal 15 marlas is entitlement of the appellant-plaintiff being 1/6th share out of land measuring 76 kanal 11 marlas and accordingly mutation No. 4736 dated 29.10.2009 is liable to be corrected. It is further averred that Sh. Shib Lal executed a registered Will bearing No. 70/3 dated 2.2.2001 but in the aforesaid Will, Shib Lal has relinquished only land measuring 8 kanal in favour of plaintiff and 68 kanal 11 marlas in favour of defendants and in this manner, defendants have been allotted excess land measuring 4 kanal 16 marlas. Another plea raised by the appellant is that suit land is ancestral and coparcenary property purchased by Sh. Shib Lal out of sale proceeds of ancestral land in villages Gwalior, Ghoshgarh and Nainwal, therefore,

Sh. Shib Lal was not competent to allot excess land in favour of defendants and less land in favour of the plaintiff.

On 1.6.2018, order passed by this Court, reads as follows:-

“The short grievance of the appellant Mawasi son of Shib Lal (since deceased) now represented by his LRs is that the has been given 4 kanal 15 marla less land situated in village Narhera Tehsil Pataudi, District Gurgaon by way of Will purported to be executed by deceased Shib Lal registered on 2.2.2001.

Counsel for the appellant would argue that one of the plea raised by the plaintiff-appellant is that suit land is ancestral and coparcenary property, purchased by Shib Lal out of sale proceeds of ancestral land at village, Gwalior, Ghoshgarh and Nainwal.

Counsel for the appellant prays for time to inspect the records if the appellant has been able to substantiate his plea with regard to land in question to be ancestral and coparcenary property in the hands of Shib Lal.

Adjourned to 12.7.2018.”

Counsel for the appellant would fairly inform that he could not lay his hands on any documentary evidence to substantiate plea of the appellant that suit land was ancestral coparcenary property in the hands of Sh. Shib Lal or the same was purchased out of sale proceeds of ancestral land in villages Gwalior, Ghoshgarh and Nainwal.

Counsel for the appellant, by relying upon testimony of

Dharam Singh PW2 has made an attempt to make out a case that suit land was purchased out of funds contributed by Mawasi and Shib Lal, therefore, the same was joint family property by referring to Para 298 of Chapter 12 of Hindu Law & Usage by Maine.

I have heard counsel for the appellant and perused the paper book particularly the judgments impugned.

Counsel for the appellant has failed to point out any materials on record to establish case of the plaintiff that suit land was ancestral coparcenary property in the hands of Shib Lal.

Counsel for the appellant, in response to a query, has admitted that no such plea was raised by the plaintiff that suit land is joint family property or it was purchased with funds contributed by Mawasi and Shib Lal. As per the settled position in law, evidence beyond pleadings cannot be looked into for grant of any relief. In this view of the matter, the appellant cannot derive any advantage to his contention from the facts elicited in the statement of PW2 and what is envisaged in Para 298 of Chapter 12 of Hindu Law and Usage by Maine.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance.

(Rekha Mittal)
Judge

21.12.2018

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