

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

RSA No. 5976 of 2018(O&M)

Date of decision: 31.10.2018

Sajjan Singh

.....Appellant

VERSUS

Dharamvir and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. P.R. Yadav, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for possession by way of partition of residential property bearing No.80/81 situated at Mohalla Sanghi Ka Bas, Rewari shown in the site plan and detailed in para 2 of judgment of the trial Court was decreed to the effect that the appellant/plaintiff is entitled to 1/6th share, Dharamvir – defendant No.1 1/6th share, Amit Kumar – defendant No.8 7/12th share, Pawan Kumar, Naveen Kumar and Saroj to the extent of 1/36th share each and accordingly preliminary decree has been passed. The appellant/plaintiff remained unsuccessful before the Appellate Court as his appeal came to be dismissed by the District Judge, Rewari vide judgment dated 22.03.2018.

Counsel for the appellant would urge that in the plaint, he claimed 1/6th share in the suit house on the basis of natural succession to Sh.Rati Ram, his father. However, in replication, he had raised a plea that suit house was ancestral coparcenary property in the hands of Sh. Rati

Ram, therefore, the appellant is entitle to more than $1/6^{\text{th}}$ share in the suit house as Sh. Rati Ram passed away in the year 1988 before amendment of Section 6 of the Hindu Succession Act, 1956 (in short 'the Act') in the year 2005. It is further argued that the plaintiff has filed an application for amendment of the plaint (CM No.16676-CII of 2018) in order to correct his share as $1/3^{\text{rd}}$ in place of $1/6^{\text{th}}$.

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned and application for amendment of the plaint.

Before advertng to merits of the appeal, it is appropriate to deal with the application for amendment of plaint. As per argument advanced by counsel for the appellant, he had raised a plea in the replication that suit house was co-parcenary property in the hands of Sh. Rati Ram, meaning thereby that the amendment sought to be raised now was to the knowledge of the appellant/plaintiff, therefore, he cannot be heard to say that he could not raise this plea despite exercise of due diligence. This apart, the proposed amendment is neither necessary nor material in view of discussion to follow qua merits of the appeal. Accordingly, application filed by the appellant for amendment of the plaint is dismissed.

There is no dispute between the parties with regard to Sh. Rati Ram having left behind six class – I heirs. Counsel for the appellant has failed to point out any materials on record to substantiate plea of the appellant raised in the replication that suit house was ancestral coparcenary property in the hands of Sh. Rati Ram. He has not produced any document of title in favour of his father Sh. Rati Ram nor any materials on record as

to on what basis Sh. Rati Ram acquired the suit property. On the contrary, if suit house was ancestral coparcenary property in the hands of Rati Ram and partition proceedings are initiated after amendment of Section 6 of the Act, the daughters of Rati Ram or a person claiming through them become entitle to a share as a coparcener. In this context, reference can be made to judgment of Hon'ble the Supreme Court in **Danamma @ Suman Surpur and another Vs. Amar and others, 2018 (1) RCR (Civil) 863**. In this view of the matter, the appellant cannot claim share more than 1/6th in the suit property. That being so, I do not find an error much less illegality in consistent findings recorded by the Courts.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condoning delay of 94 days in re-filing the appeal is of academic relevance only. However, during proceedings for passing final decree to be initiated by either of the parties to litigation, the trial Court shall examine, if dispute between the family members can be settled by way of compromise and if need be, the parties may be relegated to the Mediation and Conciliation Centre at Rewari.

OCTOBER 31, 2018

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no