

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125

RSA No.756 of 2017 (O&M)

Date of decision: 06.08.2018

Harbans Singh

..... Appellant

Versus

Surjan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sanjay Majithia, Sr. Advocate with
Mr. Inderjeet Singh, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while challenging the sale deeds executed by Surjan Singh in favour of his grand sons dated 06.01.1998 and 29.12.1997. The plaintiff claims that the property is a co-parcenary property governed by Mitakshra and therefore, the sale deeds executed are without legal necessity.

As found by both the Courts below that Bhagta, the grand-father of the plaintiff had divided the property and executed a gift deed dated 24.10.1961 distributing the land to Balwant Singh, Balbir Singh and Harbans Singh (plaintiff). Thus, the plaintiff got 35 kanals and 13 marlas of land. Whatever land was left with Bhagta, the grand-father of the plaintiff, he executed a testament in favour of his son Surjan Singh. Surjan Singh had transferred the property received under a testament in favour of his grand-sons excluding Harbans Singh, the plaintiff by sale deeds dated

06.01.1998 and 29.12.1997.

Learned counsel for the appellant has submitted that the execution of the gift deed on 24.10.1961 was only a equitable distribution of the property, and therefore, the remaining property in the hands of Bhagta would still continue to be co-parcenary property.

Both the Courts have already examined this submission. With the able assistance of learned counsel for the appellant, this Court has once again examined the submission made. Once Bhagta had gifted the property which amounted to distribution of the property amongst three grand-sons, the property which remain in the hands of Bhagta cannot continue to be a co-parcenary property. Once there was a division in the family and various family members had got their respective share, the property which was left with the common ancestor, is not a co-parcenary property in his hands. Still further, Bhagta bequeathed the property in favour of Surjan Singh who has now by way of sale deeds transferred this property in favour of his grand-sons. It is also admitted fact that Harbans Singh does not have a son.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

06.08.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No