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

**RSA-2167-1988 (O&M)
Date of decision : 26.03.2019**

Ajit Singh (deceased) through LRs

... Appellant

Versus

Savitri Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate
for the appellant.

Mr. Pawan Kumar, Senior Advocate with
Ms. Rajni Gupta, Advocate
for the respondents.

AMIT RAWAL, J.

CM-4700-C-2018

For the reasons stated in the application, which is supported by an affidavit, the legal heirs of the appellant are ordered to be brought on record for the purpose of prosecuting the appeal.

CM stands disposed of.

MAIN CASE

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the appeal of the defendants against the judgment and decree of the trial Court, decreeing the suit for specific performance of agreement to sell, has been allowed.

The appellant-plaintiff sought the specific performance of

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agreement to sell dated 01.07.1970, in respect of land measuring 80 kanals 1 marla, on the premise that Deepa @ Dalipa, husband of defendant No.1 and father of defendant Nos.2 to 9, entered into the aforementioned agreement to sell, for a total sale consideration of ₹70,000/-. The aforementioned agreement to sell was registered before the Sub-Registrar, Fatehabad and in his presence, a sum of ₹65,000/- as earnest money was paid and the balance was to be paid within two months, from the date of acquisition of the proprietary rights from the Government. The terms and conditions of the agreement to sell specified that Deepa was only an allottee. Before Deepa acquired the proprietary rights, he unfortunately died and therefore, defendant Nos.1 to 9, being heirs acquired the property in respect of land on 24.01.1978. The telegram was sent on 24.03.1978 requesting them to approach the office of Sub-Registrar on 24.03.1978, but the defendants did not appear, therefore, the suit, alleging the readiness and willingness, was filed.

The defendants opposed the suit and alleged that Deepa had no right in the property, for, it was a coparcenary property and they had a right by birth nor entered into agreement to sell. He was a drunkard and if at all, the agreement was proved, it was on account of some influence, wielded upon him.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether the agreement to sell dated 1.7.70 has been executed by deceased Deepa @ Dalipa in favour of the plaintiff in respect of the suit land as alleged? OPP*

- 2. Whether the suit is time barred? OPD*
- 3. Whether the suit is not maintainable in the present form
OPD*
- 4. Whether the suit is bad on account of misjoinder of parties
and non-joinder of necessary parties? OPD*
- 5. Whether the suit land is Hindu Undivided Family property, if
so its effect? OPD*
- 6. Whether the agreement to sell property was not for the
benefit of the Hindu Joint Family? If so its effect? OPD*
- 7. Relief.*

The plaintiff in support of the pleadings examined six witnesses and brought on record various documents. On the other hands, the defendants examined three witness and tendered in evidence many documents.

The trial Court on the basis of the evidence brought on record decreed the suit by holding that the plaintiff was able to prove the execution of the agreement to sell and intention. However, the lower Appellate Court, in appeal, affirmed the findings of the trial Court on issue No.1 with regard to the execution and nature of the property, but by relying upon the revenue record, held the property to be ancestral, accordingly, set aside the findings qua specific performance and confined the alternative relief of refund of earnest money of ₹65,000/-.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Amit Jain, learned counsel appearing on behalf of the appellant submitted that jamabandi (Ex.D1 and Ex.D2) for the year 1941-42 and 1953-54, did not

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establish that Deepa had inherited the property from his grand father i.e. great grand father of the defendants, as his father was Devi Singh. Devi Singh's father was Bhagtu. The aforementioned evidence established that Devi Singh along with other persons were co-sharer of the suit land. Any property acquired by son from his father would not be ancestral, until and unless, it is proved that he had been holding from three generations. In this regard, reference has been made to para 221, 21st Edition of Mulla's Hindu Law:-

"221. Ancestral Property. (1) Property inherited from paternal ancestor. All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great-grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth....."

It was next contended that no cross-objections were filed by the defendants to the finding of fact arrived at by the trial Court qua execution of the agreement to sell i.e. on issue No.1.

Mr. Pawan Kumar, learned Senior Counsel assisted by Ms. Rajni Gupta, submitted that the findings of fact arrived at by the lower Appellate Court being the last court of fact and law are legal and justified as on examination of the evidence brought on record, it unclinclly proved that Devi Singh had acquried the property from his grand father and defendants had right by birth and execution of the agreement to sell was without legal necessity, though expresses his handicappedness in not assailing the findings on issue No.1, but stated that the suit was barred by law of

limitation as the proprietary rights as per the averments in the plaint were acquired in the year 1978, whereas the suit was filed in 1981 thus, urges this Court for dismissal of the present second appeal.

I have heard learned counsel for the parties, appraised the paper book as well as the records of the Courts below and of the view that the following Substantial Question of Law arises for determination:-

1. Whether the findings of fact and law arrived at by the lower Appellate Court, by relying upon Ex.D1 and Ex.D2 i.e. revenue record that the suit property was coparcenary/ancestral, suffer from illegality and perversity.

On perusal of the khasra girdawari Ex.D1 and Ex.D2, it is established that Devi Singh along with other co-sharer had 1/3th share. No pedigree table has been placed on record to establish that Devi Singh inherited the property from Bhagtu and since Deepa Singh was son of Devi Singh, the defendants being 4th generation had right by birth. It was obligatory upon the defendants to place on record the revenue excerpt, which as per as per the provisions of Section 44 of the Punjab Land Revenue Act, 1887, carries a presumption of truth. Having failed to placed on record pedigree table, the defendants failed to establish the nature and character of the property being ancestral. In my view, the findings of the lower Appellate Court by relying upon the jamabandi are wholly preposterous, fallacious and perverse. Since the respondents-defendants have not assailed the findings of the trial Court affirmed by the lower Appellate Court by filing any cross-appeal against finding issue No.1, no arguments can be accepted on this ground.

Keeping in view the aforementioned facts, the judgment and

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decree of the lower Appellate Court qua issue No.2 is hereby set aside and that of the trial Court is restored. The substantial question of law, as framed above, is answered in favour of the appellant-plaintiff and against the respondents-defendants.

Resultantly, the present second appeal is allowed.

26.03.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**