

RSA No.1182 of 1992 (O&M)

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

RSA No.1182 of 1992 (O&M)

Date of decision:17.01.2019

Balbir Singh and others

... Appellants

Vs.

Amrik Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. K.S.Sidhu, Senior Advocate with
Mr. Dushyant Sarvesh, Advocate
for the appellants.

None for the respondents.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal at the instance of appellant-defendants is directed against the judgment and decree dated 11.5.1992 of the Lower Appellate Court, whereby, suit of the respondent-plaintiffs bearing no.375 of 1986 dismissed by the trial Court, has been decreed.

The plaintiffs are none else but sons of Jai Singh instituted the suit laying challenge to the two sale deeds dated 24.08.1980 and 20.05.1982 in respect of land measuring 14 kanals 12 marlas situated in village Sheikhan Majra Tehsil Kharar District Ropar without being legal necessity and co-parcenary, therefore, they had interest and right by birth in the aforementioned property.

The defendants opposed the suit and denied the nature of the property to be ancestral. It was submitted that plaintiffs and their mother

Labh Kaur had filed a civil suit no.94 of 1985 which was decided on 16.05.1982 alleging themselves to be the owners of the whole landed property except the aforementioned property which was on the basis of some family settlement but did not assert the right in the aforementioned property.

The trial Court on the basis of the aforementioned pleadings, framed as many as 09 (nine issues) including the issue of Relief.

The plaintiffs examined Labh Kaur as PW1 and closed the evidence by tendering documents Ex.P1 to Ex.P6. On the other hand, defendants examined Nanak Singh as DW1, Karamjit Kaur as DW2, Ajmer Singh as DW3, Ujaggar Singh as DW4, Prem Singh as DW5, Telu Ram as DW6 and Balbir Singh as DW7 and brought on record the documentary evidence. In rebuttal, plaintiffs examined Balbir Singh PW-2 who produced on record bahi Ex.P7.

The trial Court on the basis of evidence on record by noticing the fact that property was not ancestral, dismissed the suit. However, as noticed above, the Lower Appellate Court reversed the findings.

Mr.K.S.Sidhu, learned senior counsel assisted by Mr. Dushyant Sarvesh, Advocate appearing on behalf of the appellants submitted that for challenging the sale deed without legal necessity and co-parcenary property, it was obligatory upon the plaintiffs to place on record the revenue record to establish the nature of the property to be ancestral at the hands of their father Jai Sigh son of Mangal Singh as they have to be third generation in lineage including their minor children. Neither any revenue excerpt or

mutation and jamabandies have been placed on record to establish and connect the property as ancestral. Jamabandi Ex.P1, for the year 1981-82 reflected the ownership of Jai Singh in his own capacity and so was Ex.P2 and Ex.P4. In support of aforementioned contention, relied upon para no.221 Mulla's Hindu Law, 21st Edition and thus, there is an abdication and submitted that following substantial question of law arises for adjudication of the present appeal:-

i) Whether the judgment and decree of the Lower Appellate Court suffered from illegality when the plaintiffs did not place on record any documentary evidence to establish inheritance of Jai Singh from his forefathers and plaintiffs being fourth generation in lineage?

Despite service, there is no representation on behalf of the respondents.

The appeal is of 1992. Accordingly, I proceed further to decide the appeal.

I have heard the learned counsel for the appellants, appraised the judgments and decrees as well as of record of both the Courts below and of the view that there is force and merit in the submissions of Mr. Sidhu.

This Court while admitting the appeal on 02.06.1992 stayed execution of judgment and decree of the Lower Appellate Court. The order reads as under:-

“Admitted.

Execution of the judgment and decree of the Lower Appellate

Court is stayed.”

This Court in **Banta Singh and others vs. Phuman Singh and others 1972 PLJ 275** while noticing the High Court Rules and Orders noticed that original excerpt has to be brought on record to establish the nature of the property to be ancestral. It was obligatory upon the plaintiffs to establish that Jai Singh had inherited the property from Mangal Singh and Mangal from his father and inheritance from his great grandfather and the plaintiffs would be fourth generation in case Jai Singh had inherited the same from his grandfather but no such evidence has been placed on record. The Lower Appellate Court being the last Court of fact and law did not even advert to single piece of evidence i.e. jamabandies referred to above which ex facie established that ownership was of Jai Singh. In the absence of nature and character of the property being ancestral, the property at the hands of Jai Singh would be of self- acquired. Any sale deed executed by him cannot be affected on the ground of non-compliance of legal necessity. The aforementioned substantial question of law is, thus, answered in favour of the appellant-defendants and against the respondent-plaintiffs. The judgment and decree of the Lower Appellate Court is hereby set aside and that of trial Court is restored.

The regular second appeal is allowed.

(AMIT RAWAL)
JUDGE

January 17, 2019

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No