

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

**RSA NO.3363-2019 (O&M)
DATE OF DECISION:-15.07.2019**

KUMARI MANEET

...APPELLANT...

V.

**NAFE SINGH (NOW DECEASED)
THR. LRS AND OTHERS**

...RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Kulvir Narwal, Advocate,
for the appellant.

RAMENDRA JAIN, J. (ORAL)

CM-9054-C-2019

Prayer in this application under Section 149 CPC has been made for making up deficiency in court fee.

Learned counsel contends that he has already made good deficiency of court fee.

Thus, application is disposed off accordingly.

Main case

Unsuccessful appellant-plaintiff has filed instant Regular Second Appeal against the judgment and decree dated 17.01.2019 of the first appellate court, affirming the judgment and decree of the trial court dated 20.10.2016, whereby her suit for declaration and permanent injunction against the respondents was dismissed with cost.

Briefly, appellant-plaintiff claiming herself to be a

coparcener, being successor of her grand-father namely, Chandgi, in the suit property measuring 60 kanals and 14 marlas comprising rectangle and killa Nos.126/12/2, fully detailed in the trial court judgment, situated at village Bahu Akbarpur, Tehsil and District Rohtak, filed a suit for declaration and permanent injunction against the respondents to direct them to pay her maintenance allowance @ ₹5000/- per month. It was claimed that her grandfather Chandgi was the owner of the suit land. Upon his death, by way of natural succession, property had devolved upon his son namely deceased-respondent No.1-Nafe Singh, who had two sons namely Jai Bhagwan and Siri Bhagwan. After the death of her father-Jai Bhagwan, her mother namely, Raj Kala re-solemnized her marriage with a third person leaving her destitute and as an orphanage. At the time of death of her father, appellant was minor. Since, her uncle Siri Bhagwan by way of fraudulent decree got transferred the entire ancestral property through her grandfather-Nafe Singh, therefore, he was duty bound to maintain her.

Upon notice, respondents contested the suit, denying the coparcenary character of the property. They pleaded that it was self-acquired property in their hands and therefore, they were not liable to maintain appellant-plaintiff.

The trial court, after holding full fledged trial, dismissed the suit of the appellant, vide judgment and decree dated 20.10.2016.

Being dissatisfied, appellant-plaintiff approached the first

appellate court, but remained unsuccessful, as her appeal too was dismissed vide judgment and decree dated 17.01.2019.

Learned counsel contends that both the courts below have failed to appreciate that respondent No.2, while getting transfer the suit land, filed a suit for declaration against her grand-father-Nafe Singh, in which, he categorically admitted coparcenary character of the suit property. Even otherwise, there was ample evidence on record that original owner of the suit property was Chandgi, from whom, the property had devolved upon Nafe Singh and from Nafe Singh to respondent No.2. Thus, it had acquired "ancestral character". Both the courts below have further failed to appreciate that respondent No.2, while appearing in the witness-box as DW-2, specifically admitted "coparcenary character" of the suit property. He has placed reliance upon judgment of this Court titled as ***"Dasa Singh vs. Jasmer Singh", 2003(2) Civil Court Cases 372 (P&H).***

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this Court finds instant appeal completely devoid of any merit for the reasons to follow:-

1. No question of law much substantial has been raised in the instant appeal. Therefore, the same is held not maintainable.
2. Both the courts below have recorded concurrent findings being based on evidence that suit property in the hands of respondent No.1 had come by way of registered Will executed by his father namely, Chandgi. Therefore, it in his hands was as self-acquired

property. These findings cannot be interfered in view of the settled proposition of law that property received through a Will by a beneficiary would be his self-acquired property.

3. Deceased-Nafe Singh admittedly suffered a decree in favour of his son-respondent No.2, which was never challenged anywhere. Therefore, the same attained finality. Thus, by stretch of any imagination, it cannot be said that the suit property ever assumed the character of coparcenary property. Any vague admission of respondent No.2 before the trial court as DW2 and his pleadings in the earlier suit that the suit property was ancestral/coparcenary property, does not change the character of the suit property, inasmuch as, it is well settled that statement of witness has to be read as whole and not in isolation. In case, statement of DW-2 would be read as a whole, in that eventuality, only irresistible conclusion, which can be drawn, would be that he always claimed the suit property to be as self-acquired property. The appellant cannot be permitted to pick and choose any vague admission of respondent No.2 in her favour.

4. The respondents adduced full prove evidence before the trial court that part of the suit property was acquired by respondent No.1- Nafe Singh through his father Chandgi through registered Will and major share was purchased vide 2-3 sale deeds Exh. D2 and D3. Therefore, from this angle too, it is evident on the record that suit property in the hands of respondent No.1 was self-acquired property, which he, further transferred by way of decree in favour of respondent

No.2-Siri Bhagwan. The appellant did not ever lay challenge to the Will executed by Chandgi in favour of respondent No.1 and his further transfer of suit land in favour of his son-respondent No.2 through a civil court decree was obtained.

5. It was simply pleaded by her that respondent No.2 got transferred the suit property in his favour from his deceased father Nafe Singh fraudulently, but she did not lead any evidence to this effect. It is well settled that allegations of fraud and misrepresentation in civil litigation are to be proved like a criminal charge, which the appellant has miserably failed to do so.

I have gone through the judgments of both the courts below and find no infirmity and illegality in the same.

The authority relied upon by learned counsel for the appellant is completely distinguishable being not identical to the present case. Therefore, no benefit of the same can be given to the appellant.

In view of the discussion made above, this Court is not inclined to differ with the concurrent findings recorded by both the courts below. Hence, the instant appeal is dismissed.

15.07.2019

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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:**Yes/No****whether reportable:****Yes/No**