

RSA-3425-2016 (O&M)

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

**RSA-3425-2016 (O&M)
Date of decision : 19.03.2019**

Amarjit Kaur and others

... Appellants

Versus

Labh Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Yaseen Sethi, Advocate for
Mr. H.S. Jakhal, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

CM-9004-C-2016

For the reasons stated in the application, which is supported by
an affidavit, delay of 53 days in filing the appeal is condoned.

CM stands disposed of.

MAIN CASE

The appellants-plaintiffs are in the present regular second
appeal against the judgment and decree of the lower Appellate Court,
whereby the suit for fixation of maintenance allowance under the provisions
of Hindu Adoption & Maintenance Act, 1956, decreed by the trial Court,
has been dismissed.

The plaintiff No.1-Amarjit Kaur, alleged to be daughter-in-law
of Labh Singh/defendant asserted that the property at the hands of Labh

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Singh was ancestral and owing to demise of her husband Jarnail Singh, she was not being looked after and sought the indulgence of the Court.

The respondent-defendant opposed the suit and denied the nature and character of the property to be ancestral. It was further averred that he and his wife aged 80 and 78 years, respectively, suffered from many ailments and diseases. The defendant-Labh Singh had already transferred the land measuring 12 kanals 9 marlas in favour of his other sons including the husband of the plaintiff and was not the owner of any land and prayed for dismissal of the suit.

The plaintiffs in support of the aforementioned pleadings examined two witnesses and brought on record Ex.P1 to Ex.P19 i.e. jamabandi, site plan, death certificate etc. On the other hand, the defendants examined three witnesses and brought on record various documents.

The trial on the basis of the evidence, decreed the suit, but the lower Appellate Court, in appeal, reversed it.

Learned counsel appearing on behalf of the appellants-plaintiffs submitted that there is categoric admission of the defendant with regard to the nature and character of the property being ancestral and in such circumstances, the trial Court has rightly decreed the suit, but the lower Appellate Court has erroneously fastened the onus upon the plaintiffs of having not proved the property being ancestral in nature. The aforementioned finding, thus, is totally of the record and without any reasoning.

I am afraid the aforementioned argument is not sustainable, as the jamabandis brought on record did not prove the nature and character of the property to be ancestral. The plaintiffs miserably failed to discharge the

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onus for creating charge on the suit land for granting maintenance.

Keeping in view the aforementioned facts, I do not find any
illegality and perversity in the judgment and decree of the lower Appellate
Court, much less, no substantial question of law arises for determination.
No ground is made out for interference.

Resultantly, the second appeal is dismissed.

19.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**