

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

RSA No.3667 of 2016 (O&M)

Date of decision:28.3.2019

Prabhjit Singh

... Appellant

Vs.

Harbhajan Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Sherry K. Singla, Advocate
for the appellant.**

AMIT RAWAL J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the Lower Appellate Court whereby suit challenging the sale deed executed by defendant no.1-Harbhajan Singh in favour of third party, decreed by the trial Court has been dismissed.

The plaintiff alleged that the property at the hands of Harbhajan Singh was ancestral as he inherited the same from grandfather, i.e. Ghona Singh and on his demise, passed on to Sampuran Singh, therefore, he being fourth generation in lineage, had right in the property by birth. There was no occasion for the father to execute the sale deed, if there was no personal necessity.

Defendant no.1-Harbhajan Singh opposed the suit by asserting that it was self acquired property and denied the nature and character of the property to be ancestral.

Since the parties were at variance, the trial Court framed seven issues. The plaintiff in order to prove the nature of the property to be ancestral brought on record jamabandi for the years, 1982-83, 1987-88 and 2007-08 to establish that Harbhajan Singh inherited the property from Sampuran Singh. On the other hand, the defendants in order to prove the sale deed brought on record jamabandi of 2012-13, and as well as of 1982-83.

The trial Court while noticing not only oral but documentary evidence held the property was not ancestral and found that Sampuran Singh had inherited the property from Ghona Singh great grandfather of the plaintiff decreed the suit.

Mr. Sherry K. Singla, learned counsel appearing on behalf of the appellant-plaintiff submitted that finding of fact and law arrived at by the trial Court could not have been set aside by relying upon the provisions of Mulla's Hindu Law as the Lower Appellate Court abdicated in not referring to the contents of the statement of the witness that Sampuran Singh inherited the property from his father Ghona Singh. The requirement of law is that a person who is asserting the property to be ancestral has to be held by his three common ancestor and he being fourth, therefore, there is gross illegality and perversity.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Singla, as jamabandis noticed above reflected that Sampuran Singh was owner of the

property which on his demise was inherited by Harbhajan Singh. There were two generations and plaintiff was third. As per para no.221 of Mulla's Hindu Law (21st Edition), it has to be three generation and person asserting the right in the property to be fourth generation. No evidence with regard to the fact that Ghona Singh's share ever inherited by Sampuran Singh, thus, finding of fact and law arrived at by the Lower Appellate Court after examination of evidence being the last Court is perfectly legal and justified and do not suffer from perversity.

No ground for interference is made out.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 28, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No