

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

**RSA No.3969 of 2016 (O&M)
Date of decision:24.05.2019**

Maan Singh and others

... Appellants

Vs.

Salindro Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Hem Raj Bhardwaj, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.10264-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 45 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.3969 of 2016 (O&M)

The appellant-plaintiffs have not been successful in claiming the declaration challenging the sale deed dated 18.4.2012 allegedly executed by their father Mam Raj in favour of the defendants i.e. brother, sister-in-law and mother asserting the right on the premise that it was ancestral property. It was alleged that though the land sold was 2 kanal 9 whereas the sale deed reflected 2 kanals 19 marlas.

The defendants opposed the suit and denied the nature of the suit property to be ancestral. It was voluntary act. Since plaintiffs were demanding their share in the land of Mam Raj, he sold the same to defendant no.1 for valuable consideration of Rs.2,77,000/- which was distributed among the plaintiffs and defendant no.3 in equal shares and he lived for almost months thereafter and died on 11.09.2012.

The plaintiffs in support of the averments examined Dharminder Singh as PW1 and tendered the certain documents Ex.P1 to Ex.P7, i.e. jamabandi, sale deed, mutations, death certificate of Mam Raj, reflecting mutation of inheritance in favour of Mam Raj from his father Kyola Ram. On the other hand, defendants examined three witnesses and brought on record Ex.D1 and Ex.D2.

Mr. Hem Raj Bhardwaj, learned counsel appearing on behalf of the appellant-plaintiffs submitted that aforementioned mutation reflected the nature of the property as co-parcenary. The sale deed was in respect of 2 kanals 9 marlas for a sum of Rs.2,77,000/- but accorded as 2 kanals 19 marlas. All these factors have not been considered by the Courts below, thus, suit was liable to be decreed.

I am afraid the aforementioned arguments are not sustainable for the simple reason that the inheritance of Mam Raj from his father Kyola Ram would not obtain the nature and character of the property as ancestral. It has to be from great grandfather whereas it was from grandfather. There is provision in the Specific Relief Act for rectification of the sale deed but on this point suit could not have been entertained. The plaintiffs miserably

failed to prove the nature of the property as ancestral and therefore, deemed to have been self-acquired. The element of fraud and mis-representation is also conspicuously wanting.

As an upshot of my findings, arguments of Bhardwaj, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 24, 2019
savita

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