

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.4572 of 2016 (O&M)
Date of Decision.13.05.2019

Tek Chand

...Appellant

Vs

Jhandhu and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Jain, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in claiming declaration of 1/4th share in the land measuring 50 kanals.

The case set out in the plaint was that father of the plaintiff namely Ganga Jal was *gair marusi* tenant having long and settled possession over the suit land. The Government had formulated a scheme for conferring title on such persons on receipt of payment in 10 (ten) equated installments. Ganga Jal expired in 1991, however, in the year 1989 executed a Will in favour of defendant No.1 to 3 reflecting payment of only three installments. It was asserted that he could not have transferred the share in the absence of any title.

The defendants contested the suit by taking all possible objections regarding the maintainability and act of the plaintiff.

Mr. Ajay Jain, learned counsel appearing on behalf of the appellant submitted that a person, who is not owner of the property, cannot transfer the property by virtue of Will, though the Will has been proved on record. In fact, there was no conveyance and title in favour of father. On death of father on 15.01.1991, suit was filed on 10.09.2008 as there is no limitation qua asserting right on the basis of

title.

I am afraid aforementioned argument is not sustainable in the eyes of law as plaintiff cannot have a right in self-acquired property of the father, as the father was ostensible owner in view of provisions of Section 41 of the Transfer of Property Act. No evidence has been led to belie the Will. The act of the father cannot be challenged, that too after almost 16 years of his demise.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 13, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No