

**RSA No.3572 of 2015 (O&M) and
RSA No.396 of 2016 (O&M)**

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

Date of decision : 08.03.2019

1. RSA-3572-2015 (O&M)

Karamjit Kaur and others

... Appellants

Versus

Mukhtiar Singh (deceased) through LR's and others

... Respondents

2. RSA-396-2016 (O&M)

Karamjit Kaur and others

... Appellants

Versus

Mukhtiar Singh (deceased) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.S. Bhandohal, Advocate
for the appellants.

Mr. Naresh Jain, Advocate and
Mr. Atul Goyal, Advocate
for the respondents/caveators.

AMIT RAWAL, J. (ORAL)

CM-1175-C-2016 IN RSA-396-2016

For the reasons stated in the application, which is supported by
an affidavit, delay of 147 days in refiling the appeal is condoned.

CM stands disposed of.

MAIN CASES

This order of mine shall disposed of two regular second

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appeals, aforementioned, preferred against the judgment and decree of the lower Appellate Court, whereby the suit bearing Civil Suit No.686 of 2009, for declaration and permanent injunction decreed by the trial Court, has been dismissed. However, two sets of the appeals, at the instance of the defendants, were filed, which have been allowed. In such circumstances, two appeals have been filed before this Court.

The plaintiffs had sought the declaration claiming subject matter of the land to be ancestral by laying challenge to the two transfer deeds bearing No.3351 and 3352 dated 05.02.2009, on the premise that Mukhtiar Singh was the owner of the land and the property was inherited by him from his forefather and therefore, it was ancestral at his hands and could not have executed the transfer deeds in favour of two sons i.e. Makhan Singh and Roop Singh, by ignoring the son Major Singh and the LRs of Gurdev Singh, other son, (since deceased).

The defendants opposed the suit by raising objection qua maintainability and concealment of the valid fact that Mukhtiar Singh, during his lifetime, had already been distributed the part of the land, in favour of all the four sons and kept some part with him. The transfer deed was with regard to his share and denied the nature and character of the property to be ancestral. His Will dated 10.12.2003 was validly executed in favour of Karamjit Kaur, Major Singh and Roop Singh.

Since the parties were at variance, the following issues were framed:-

- 1. Whether the plaintiffs are entitled to declaration as prayed for?*
- 2. Whether the plaintiffs are entitled to permanent injunction*

as prayed for? OPP

3. Whether the plaintiffs are entitled to declaration to the effect that transfer deed dated 05.02.2009 is illegal, null and void?

OPP

4. Whether the Will dated 10.12.2003 was validly executed in favour of Karamjit Kaur, Major Singh and defendant No.2?

OPP

5. Whether the suit is not maintainable? OPD

5A Whether the plaintiffs have got no cause of action or locus standi to file the suit, if so, its effect? OPD

5B Whether the plaintiffs have not come to the Court with clean hands or have suppressed the material facts from the court, if so, its effect? OPD

6. Relief.

The plaintiff examined three witnesses, who proved the Will dated 10.12.2003 and brought on record various documents Ex.P1 to Ex.P5, whereas the defendants examined four witnesses and relied upon the transfer deeds and the Will.

The trial Court on the basis of the evidence brought on record decreed the suit and held that the property at the hands of Makhan Singh was ancestral as he inherited from Nikha Singh. As noticed above, the lower Appellate Court has set aside the decree of the trial Court by holding the property was not ancestral.

Mr. J.S. Bhandohal, learned counsel for the appellant submitted that the only point involved in the case is whether the parcel of the land, at the hands of Mukhtiar Singh received by virtue of the decree from his father Nikka Singh, would be ancestral or not. The trial Court rightly held to the property to be ancestral as by virtue of a decree, it will not change its

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character and nature.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, the plaintiffs are none-else, but sons of Mukhtiar Singh. They were required to prove that Mukhtiar Singh was holding the property from 3rd generation and they being 4th generation in lineage had the right. Mukhtiar Singh acquired the title by virtue of the decree suffered by Nikka Singh. There is no evidence on record that Nikha Singh acquired the property from his father. This aspect has not been taken into consideration by the trial Court, which is against the provisions of para 221, 21st Edition of Mulla's Hindu Law:-

"221. Ancestral Property. (1) Property inherited from paternal ancestor. All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great-grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth....."

It is also a matter of record that after the previous Will, Mukhtiar Singh had executed the Will dated 03.08.2010, but that would not be given effect for the reason that during his lifetime, vide impugned transfer deeds, he transferred the property/land, in favour of two sons. In the absence of nature and character of the property being ancestral, the property/land, at the hands of Mukhtiar Singh, would deem to have self acquired. The plaintiffs could not lay the challenge to the same.

In view of what has been noticed above, the findings arrived at by the lower Appellate Court being last Court of fact and law cannot be said

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to be suffering from illegality and perversity, much less, no substantial question of law arises for determination. No ground is made out for interference. Accordingly, the regular second appeals are dismissed.

08.03.2019
Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**