

RSA-5490-2016 (O&M)

114

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

RSA-5490-2016 (O&M)

Date of decision : 29.01.2019

Prabjeet Singh and others

... Appellants

Versus

Parvinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Gupta, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the plaintiffs has been dismissed by the trial Court and affirmed in appeal.

It was alleged that Prabjeet Singh as he was then alive, instituted the suit along with his wife and children, challenging the registered release deed dated 01.12.2000 executed in favour of the defendants, in respect of the suit land, on the premise that the property at the hands of his father Amrik Singh was ancestral as he is inherited from his grandfather and his son being 4th generation in lineage had right by birth.

The defendants opposed the suit on various grounds and denied the character and nature of the property as ancestral and stated to be self acquired. A family settlement dated 28.04.2000 was propounded between the parties, wherein the plaintiff had received a sum of ₹3,71,000/- and on the basis of the family settlement, even mutation was also stated to have been effected.

Learned counsel for the appellants-plaintiffs submitted that in

RSA-5490-2016 (O&M)

support of the aforementioned pleadings, the plaintiffs examined Surjit Singh as PW1, Maya Ram Registry Clerk as PW2 and Mohinder Kaur as PW3, as Prabhjeet Singh, during the pendency of the suit, died and brought on record copy of release deed (Ex.P1), copy of jamabandis for the year 1995-96 and 2000-01 (Ex.P2 and Ex.P3), copy of Andra (Ex.P4 to Ex.P8) and copy of voter list for the year 1994 (Mark A). On the other hand, the defendants examined four witnesses and brought on record affidavits, copy of ikrarnama (Ex.D1 to Ex.D3), copy of jamabandi for the year 2000-2001 (Ex.D4), copy of particulars of Central of India (Ex.D5), copy of passbook (Ex.D6) and copy of prelekh No.109/1 dated 23.4.2004 (Ex.D7). The lower Appellate Court, in para 25, though referred the nature and character of the property as ancestral, dismissed the suit viz-a-viz plaintiff Nos.3 and 4, to whom, the property was *ex facie* ancestral, thus, the release deed without legal necessity was liable to be set aside.

I have heard learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Sanjiv Gupta, for, the reference, in para 25, of the lower Appellate Court, if read, is just a passing, as the plaintiffs miserably failed to bring on record any revenue record including the Excerpt, which is mandatory requirement of law, establishing that the property at the hands of Amrik Singh was inherited from his grandfather or from Hari Singh as Hari Singh would be great grandfather qua plaintiff Nos.3 and 4. For the sake of brevity, para 25 reads as under:-

"Para 25 of the judgment of the lower Appellate Court

25. In the present case, since the suit property was inherited by defendant No.2 Amrik Singh from his father Hari Singh i.e.

RSA-5490-2016 (O&M)

from the male ancestro, who did not exceed three degrees higher than him, so the nature of the suit property was ancestral. As such, the findings of learned lower Court to the effect that ancestral nature of the suit property was not proved, is not correct and is result of mis-appreciation of facts and law."

In the absence of the same, the property could not be said to be ancestral, therefore, the said finding, in my view, is totally *obiter*. The reference of acknowledgement of the property in the release deed or admission, does not make the nature and character of the property as ancestral, for, the onus lies upon the plaintiffs. The plaintiffs miserably failed to discharge the onus. Had such evidence been led, perhaps there would have been some force.

In this view of the matter, there cannot be any illegality or perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the regular second appeal is dismissed.

29.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**