

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

**RSA No.945 of 2016 (O&M)
Date of Decision.21.01.2019**

Jiwan Singh

...Appellant

Vs

Basakha Singh (deceased) through LRs and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Balbir Singh Saini, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in claiming declaration being owner in possession of the suit property i.e. 8 marlas plot in Mullanpur Garibdas on the basis of family settlement arrived at during the life time of Basakha Singh. It was alleged that Basakha Singh had five children namely, Jiwan Singh, Gurmail Singh, Harnek Singh, Sher Singh sons and Surjit Kaur, daughter.

The aforementioned plot was purchased by Basakha Singh, half in his name and half in the name of Sher Singh. During his life time, Basakha Singh executed sale deed dated 03.07.2002 in favour of Sher Singh and Sher Singh executed sale deed dated 29.10.2003 in favour of defendant No.3, which could not have been done except for legal necessity, as the plaintiff had right by birth as suit property was purchased out of sale proceeds of ancestral property.

Defendants opposed the nature and character of the

property to be ancestral property but asserted to be self-acquired.

Mr. Saini, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below have committed illegality and perversity in non-suiting the plaintiff on the ground that nature and character of the property has not been established as ancestral, for, family settlement entered into was not denied by the defendants.

I am afraid aforementioned argument of Mr. Saini is not sustainable, as it is obligatory and incumbent upon the plaintiff to establish the right by birth being 4th generation in lineage. In other words, Basakha Singh had derived the property from his forefathers. No documentary evidence in the shape of revenue excerpt brought on record. In such circumstances, courts below had no other option but to dismiss the suit.

In view of aforementioned facts, arguments of Mr. Saini have not been able to bring the case within the realm of illegality and perversity, 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

January 21, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No