

RSA-4712-2015 (O&M)

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

RSA-4712-2015 (O&M)

Date of decision : 08.05.2019

Manohar Lal

... Appellant

Versus

Tilak Raj and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-11340-C-2015

For the reasons stated in the application, which is supported by
an affidavit, delay of 26 days in refiling the appeal is condoned.

CM stands disposed of.

MAIN CASE

The appellant-plaintiff has not been successful in claiming
declaration challenging the judgment and decree dated 11.09.1995 passed in
Civil Suit No.1062 of 1995 titled as **"Tilak Raj V/s Sham Dass"** being null
and void and further declaration to be owner in possession of 1/5th share in
the suit property with a consequential relief of permanent injunction seeking
restraint of alienation etc.

It was alleged that the plaintiff was the son of Hardayal and

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Dropti Bai. After the death of his father, his mother performed Kareva marriage with Sham Dass, who was the younger brother of Hardayal. The plaintiff was adopted by Sham Dass as his son, whereas the defendant is the son of Sant Lal. Once he had executed the Will in favour of Tilak Raj, he could not have executed the decree as the property was ancestral.

The defendants opposed the suit and denied the nature and character of the property to be ancestral and it was self-acquired property. There was no pre-existing right of the plaintiff laying the challenge to the decree as it is not his father, who performed the Kareva marriage, but his mother.

Both the parties led extensive evidence in support of their respective cases.

Mr. Vikram Singh, learned counsel appearing on behalf of the appellant-plaintiff submitted that the Will propounded by the defendant has not been proved in accordance with law as no attesting witness has been examined and the decree also required the registration. All the aforementioned acts were without legal necessity, in view of the evidence, reflecting the nature and character of the property as ancestral.

I am afraid the aforementioned argument is not sustainable, for, the plaintiff miserably failed to prove the nature and character of the property as ancestral as well as staking the claim in the estate of Sham Dass as Sham Dass was the brother of Hardayal. Even, in such circumstances, the decree does not require registration as the plaintiff had no pre-existing right.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Vikram Singh, to form a different opinion than the one

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already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the second appeal is dismissed.

08.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**