

RSA-5269-2017 (O&M)

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

RSA-5269-2017 (O&M)

Date of decision : 22.04.2019

Jagdish

... Appellant

Versus

Satnam Chand and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jagjit Gill, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant has not been successful in claiming the declaration that he along with proforma defendant No.2 being son and daughter of defendant No.1, to be owners with symbolic possession of 1/3rd share each, in the various properties, purportedly treated to be ancestral one.

It was alleged that defendant No.1-Satnam Chand, by way of succession mutation No.3946, obtained the property from his father Sahib Ditta. He was in habit of consumption drinking liquor and gambling and, thus, had apprehension of alienating the property, which could not be done as they had right by birth.

Defendant No.1 opposed the suit and denied the nature and character of the property to be ancestral. It was explained that he and his wife had been residing separately for the last more than 20 years and he had been making the payment under Section 125 of the Code of Criminal

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Procedure to his wife and defendant No.2, being daughter.

The plaintiff in support of the pleadings examined himself as PW1 and brought on record Ex.P1, copy of the jamabandi for the year 2007-08 and Ex.P2, copy of mutation No.3946. On the other hand, the defendant failed to lead any evidence despite availing several effective opportunities.

Mr. Jagjit Gill, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below dismissed the suit without noticing the fact that the suit property was ancestral and the plaintiff and defendant No.2, had the right by birth.

I am afraid the aforementioned argument is not sustainable in the eyes of law as it has to be three generation in lineage. By a simple assertion that estate of Sahib Ditta devolved upon defendant No.1 i.e. father of the plaintiff and defendant No.2, cannot clothe the property as ancestral. The plaintiff miserably failed to place on record pedigree table as well as excerpt to establish the nature and character of the property as ancestral.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Gill, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. Resultantly, the second appeal is dismissed.

22.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**