

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

**RSA No.5602 of 2017 (O&M)
Date of Decision.24.05.2019**

Parminder Kaur

...Appellant

Vs

Bara Singh and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S Swaich, Advocate
for the appellant.

Mr. F.S. Virk, Advocate
for the caveator-respondents.

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AMIT RAWAL J. (ORAL)

Notice of motion.

Mr. F.S. Virk, Advocate accepts notice for respondents.

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, which according to learned counsel for the appellant is totally a misreading of the revenue record, resulting into dismissal of the suit, though decreed by the trial Court.

It was submitted that one Mastan Singh was owner of certain parcels of land as reflected in para (i) of the plaint, who died in 1948. He had two sons Ishar Singh and Mukhtiar Singh. Ishar Singh had six sons including defendant No.1 Bara Singh. Mukhtiar Singh had two sons. Ranjit Singh was son of defendant No.1 Bara Singh and husband of the plaintiff. Ranjit Singh died in 2005 but prior to that another son Joginder Singh, pre-deceased Ranjit Singh.

His share was also liable to be devolved upon all surviving legal

heirs. The property at the hands of Bara Singh was ancestral and therefore, claimed joint possession to the extent of 1/4th share in all the properties referred to in the plaint.

The defendants opposed the suit and denied the nature and character of the property as ancestral to say that Ishar Singh pre-deceased Mastan Singh and therefore, inheritance devolved to six sons including Bara Singh. It was self-acquired property as mutation reflected the inheritance by way of testamentary document.

Plaintiff in support of the aforementioned pleadings examined four witnesses and brought on record excerpt, jamabandies starting from 1958-59 to 2007-2008 including mutations. One of the mutation is Ex.P1/C showing inheritance of Mastan Singh to the extent of one half in favour of six sons of Ishar Singh and second half to Mukhtiar Singh another son of Mastan Singh. Defendants examined Bara Singh as DW1 and closed the evidence. PW5 Bachhittar Singh, power of attorney of plaintiff, was examined in additional evidence. The trial Court after noticing the aforementioned evidence decreed the suit but the lower Appellate Court has reversed the same.

Learned counsel appearing on behalf of the appellant in support of the memorandum of appeal, on instructions from his client, submitted that he does not press claim with regard to properties mentioned in para (ii) to (iv) in the plaint and confines his prayer to only para (i) as 1/4th share out of 33 bighas 6 biswas 9 biswanis i.e. 8 bighas 6 biswas and 17 biswanis bearing Khewat No.26, Khatoni No.32, 33, 34, Khasra No.304, 305, 306, 307, 389, 410, 1943/710/3

min, 343, 344, 345, 346, 333 min, 1941/710/min, 333 min, 1943/710/3 min and drawn attention of the Court to Ex.P1/C, mutation of inheritance to allege that the lower Appellate Court by noticing column No.1 reflecting Will dated 25.06.1948 with regard to estate of Mastan Singh, reversed the finding holding it to be self-acquired property whereas there was no such Will propounded by the defendants in the pleadings or the evidence and it was only on account of inheritance. Pedigree table on backside of it also reflected that property at the hands of Bara Singh was ancestral as Ranjit Singh son of Bara Singh was 4th generation in lineage.

Per contra, Mr. Virk, learned counsel appearing on behalf of the respondents-defendants submitted that the plaintiff miserably failed to discharge the onus with regard to nature and character of the property as no original record has seen light of the day but did not deny the fact that defendants never propounded any Will of Mastan Singh, Ishar Singh etc. Pleadings are also conspicuously wanting with regard to inheritance of property from Mastan Singh and therefore, the trial Court could not have granted the relief, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of learned counsel for the appellant with regard to claim in property No.(i) as the other claims have been abandoned. Mutation of inheritance Ex.P1/C coupled with other documentary evidence reflected that on demise of Mastan Singh in 1948 i.e. mutation of inheritance dated 25.06.1948 was entered in favour of six sons of

Ishan Singh as Ishar Singh died pre-deceased and Mukhtiar Singh son of Mastan Singh. Mastan Singh was first generation, Ishar Singh second and his six sons were third generation and therefore, Ranjit Singh son of Bara Singh being 4th generation had right by birth. It is also matter of record that there is no such evidence that Ranjit Singh had strained relation with his family. Joginder Singh, who had also died issueless prior to Ranjit Singh, his share had also fallen to all the collaterals being Class II heirs. The lower Appellate Court, in my view, has abdicated in dismissing the suit.

In view of aforementioned circumstances, judgment and decree of the lower Appellate Court is set aside and the suit qua property No.(i) is allowed as the appellant-plaintiff has abandoned other claims. Resultantly, the second appeal is allowed in the above terms. Decree sheet shall be prepared accordingly.

(AMIT RAWAL)
JUDGE

May 24, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No