

RSA No.5605 of 2017 (O&M)

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

RSA No.5605 of 2017 (O&M)

Date of decision:15.02.2019

Rupinder Kaur and others

... Appellants

Vs.

Mehal Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. C.M.Munjal, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.14810-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 5 days in filing the appeal is condoned.

C.M. stands allowed.

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The appellant-plaintiffs have not been successful in claiming the declaration by setting aside the sale deed dated 15.11.2007 executed by their father, defendant no.1 in favour of defendant no.2 in respect of land measuring 171 kanals 5 marlas i.e. 103 kanals 4 marlas being 1/3 share of 309 kanals 13 marlas out of khewat no.55 situated in the area of village Nasira Khilchi and land measuring 68 kanals 1 marlas being 1361/5227 share of 261 kanals 7 marlas bearing rect. no.75 situated in the area of village Lohra Nawab, Tehsil and District Ferozepur on the ground that property at the hands of defendant no.1 was ancestral.

It was alleged that prior to the aforementioned incident/sale deed, civil suit for injunction against the father was filed where he has undertaken the nature and character of the property to be ancestral with further restrained from alienation. The said suit was withdrawn.

Mr. C.M.Munjal, learned counsel appearing on behalf of the appellant-plaintiffs submitted that as per the amendment caused in Section 6 of Hindu Succession Act in September 2005, the married daughters have right and share in the ancestral property. Since the sale deed is of 2007 i.e. post amendment, they had right in the property and in view of the categorical admission of the defendant, the onus to prove the nature and character of the property already stood discharged but the Courts below have abdicated in not appreciating the aforementioned aspect

I am afraid the aforementioned arguments are not sustainable as the onus heavily laid upon the plaintiff regarding character and nature of the property but failed to discharge the onus by bringing on record the original excerpt or revenue record establishing that they are fourth generation in lineage as the property had been inherited by their father from great grandfather. Having failed to lead evidence, the Courts below had no other occasion but to dismiss the suit.

As an upshot of my findings, arguments of Mr. C.M.Munjal, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 15, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No