

RSA-5748-2017 (O&M)

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

**RSA-5748-2017 (O&M)
Date of decision : 15.05.2019**

Baljeet Singh and another

... Appellants

Versus

Het Ram (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate for the appellants.

AMIT RAWAL, J. (ORAL)

The appellants-plaintiffs have not been successful in claiming the partition of the land under the presumption that they had the share by birth in the property held by their father, by challenging the sale deeds executed by Het Ram in favour of defendant No.2-Sushil Kumar, being brother.

It was alleged that the property at the hands of Het Ram was ancestral as he inherited from his father Reda Ram.

The defendants opposed the suit and did not deny the nature of property having been inherited, but stated to be self-acquired property and not the ancestral.

Both the parties led extensive evidence.

The trial Court dismissed the suit and the appeal was also dismissed.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the property inherited from grand father would be ancestral and therefore, Het Ram could not have sold the property

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except for legal necessity, which was conspicuously wanting. The preliminary decree, in such circumstances, was inevitable.

I am afraid the aforementioned argument is not sustainable, for, as per the provisions of para 221, 21st Edition of Mulla's Hindu Law, a person, who is asserting the right in the property, has to be 4th generation in lineage and proved that the property as inherited is from immediate three generations. The provisions of para 221, 21st Edition of Mulla's Hindu Law read as under:-

"221. Ancestral Property. (1) Property inherited from paternal ancestor. All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great-grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth....."

In the present case, no evidence has been placed on record to establish that the property as inherited from the forefathers i.e. three generations and the plaintiffs being the 4th generation in lineage had right by birth.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Goel, 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.

15.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No