

RSA Nos.5840 of 2017 (O&M) & 2059 of 2018 (O&M)

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

Date of decision : 16.05.2019

1. RSA-5840-2017 (O&M)

Suraj Kaur

... Appellant

Versus

Ved Parkash and others

... Respondents

2. RSA-2059-2018 (O&M)

Ved Parkash

... Appellant

Versus

Suraj Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Abhinav Sood, Advocate
for the appellant in RSA-5840-2017.

Mr. Manish Mehta, Advocate
for the appellant in RSA-2059-2018 and
for respondent No.1 in RSA-5840-2017.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two regular second appeals bearing **RSA No.5840 of 2017** titled as **“Suraj Kaur V/s Ved Parkash and others”** filed at the instance of appellant-defendant No.1 and **RSA No.2059 of 2018** titled as **“Ved Parkash V/s Suraj Kaur and others”** filed at the instance of appellant-plaintiff, as both the appeals have arisen out of the common Civil Suit No.552 of 2007 titled as “Ved Parkash and others V/s

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Smt. Suraj Kaur and others” for declaration with consequential relief of permanent injunction seeking restraint qua alienation of the property.

The children of defendant No.1-Suraj Kaur, claimed declaration of ownership asserting the right in the property to be ancestral by challenging the sale deed dated 30.09.1969, executed by the father, being husband of defendant No.1.

It was alleged that their father-Rameshwar Dayal, inherited the property from Chanderbhan and Khayali, therefore, they being 4th generation in lineage, had the right by birth. The sale deed was without legal necessity.

Defendant No.1-Suraj Kaur, denied the nature and character of the property to be ancestral and alleged that it was self acquired property of her husband and acquired the ownership by virtue of the sale deed, which was out of love and affection, being a Hindu wife and had become the full owner.

The plaintiffs brought on record numerous documents i.e. revenue record to establish the nature and character of the property as ancestral i.e. Ex.P1 to Ex.P19.

The trial Court on the basis of the evidence brought on record dismissed the suit. The appeal was filed by the plaintiff and the lower Appellate Court, though without noticing the revenue record, held the property to be ancestral, but dismissed the suit and also sent the case to the Collector for holding an enquiry against defendant No.1 and appellant in RSA No.5840 of 2017, in order to prevent the declaration of the land as surplus at his hands, executed the sale deed *ibid*, without any consideration.

Mr. Abhinav Sood, learned counsel appearing on behalf of

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appellant-defendant No.1, in RSA No.5840 of 2017, submitted that the lower Appellate Court has committed legality and perversity in referring the matter to the Collector and holding the property to be ancestral as the plaintiffs have miserably failed to prove the devolution from Khayali Ram in favour of Chanderbhan, grandfather of the plaintiff. There is no evidence declaring the land surplus, even the provisions of Haryana Ceiling of Land Holdings Act, 1972 (in short 'the 1972'), have not been taken care of. Reference to the Collector is wholly fallacious and perverse.

Notice of motion in RSA No.5840 of 2017.

Mr. Manish Mehta, Advocate, who is present in Court, accepts notice on behalf of respondent No.1, being contesting respondent.

Mr. Manish Mehta, learned counsel appearing on behalf of respondent No.1 in RSA No.5840 of 2017 and for the appellant in RSA No.2059 of 2018, submitted that the lower Appellate Court had formed an opinion qua nature and character of the property as ancestral, but erroneously non-suited the plaintiff, on the ground of delay as they had the knowledge of the sale deed much prior to sale. The defendants had not challenged the findings of property being ancestral in nature. Ex.P4 and Ex.P7, reflect the devolution of interest on the basis of succession in favour of Rameshwar Dayal from his father Chanderbhan son of Khayali Ram. There was already a family settlement amongst the members, wherein the defendant had agreed for equal distribution amongst the children.

In rebuttal, Mr. Sood, submitted that even, in the absence of specific challenge to the findings, in the appeal preferred by appellant-defendant No.1, the provisions of Order 41 Rule 33 of the Code of Civil Procedure, can be pressed into service.

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I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Manish Mehta, for, the revenue record shown to this Court and read over in open Court, during the course of hearing, reveals that Ex.P4 and Ex.P7, only reflect the succession of the property of Chanderbhan and then in favour of Rameshwar Dayal. It is two generations and the plaintiff is 3rd one. 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. The same reads 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....."

No pedigree table or revenue excerpt has come forward on record to establish the nature and character of the property as ancestral.

The lower Appellate Court, in my view, totally abdicated in giving the finding qua nature and character of the property as ancestral, in paragraph No.16, which reads as under:-

"16. Undoubtedly, the documents mentioned above and relied upon by Learned counsel for the appellant though goes to prove that Chandriya alias Chanderbhan was father of person Rameshwar Dayal and from Chanderbhan his sons namely, Rameshwar Dayal and his brother inherited the suit property and lastly Rameshwar Dayal become owner of the same on death of his brother namely Peeru. In other words, it stands proved on the basis of the said jamabandies and mutation that the suit property was neither self-acquired nor absolutely self obtained of Rameshwar Dayal but had arrived to him as

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ancestral and coparcenary from his ancestor namely Chanderbhan."

Even the contents of the sale deed do not reflect the husband's name. It would not construe to be an act of fraud, allegedly committed by Rameshwar Dayal, to overcome the applicability of the 1972 Act. The lower Appellate Court, in my view, exceeded the jurisdiction in forming an opinion, without any evidence qua the land having been declared as surplus or vesting of the surplus land in the State, as per the provisions of Section 12(3) of the 1972 Act. The direction of the lower Appellate Court, to the Collector, for holding an enquiry against defendant No.1-Suraj Kaur, is hereby expunged.

As an upshot of my observations, the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law and the same is hereby set aside and that of the trial Court is restored, in essence, the suit of the respondent-plaintiff is dismissed.

Resultantly, RSA No.5840 of 2017 is allowed.

The appeal bearing RSA No.2059 of 2018 is also accompanied by an application seeking condonation of delay of 170 days in filing. The application is bereft of any reasonable or justifiable explanation.

Resultantly, RSA No.2059 of 2018 is dismissed on merits as well as on limitation.

16.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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