

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6434 of 2017 (O&M)

Date of Decision: February 25, 2019

Gurmel Singh @ Kaka Singh

...Appellant

Versus

Ran Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Namit Gautam, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.16641-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 10 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.6434 of 2017

Appellant-plaintiff has not been successful in claiming declaration for setting-aside the judgment and decree dated 13.07.1995 rendered in Civil Suit No.152 of 07.03.1995 titled as “Ran Singh Versus Norang Singh” in respect of the suit property and further two sale deeds dated 30.10.2006 executed by defendant No.1 in favour of defendant Nos.1A to 1D.

It was alleged that Norang Singh, during his life time, had suffered a collusive decree in favour of Ran Singh aforementioned. In fact,

the suit property was ancestral as he had inherited from the great grandfather and the plaintiff was 4th generation in lineage. The decree was required to be registered. Norang Singh was arrayed as defendant No.2. However, during the pendency of the suit, he died.

Plaintiff, in support of the pleadings, brought on record umpteen number of documents Ex.P1 to Ex.P21, Khatauni Pamaish, jamabandies for the years 1917-18, 1929-30, i.e., during pre and post consolidation, judgment and decree, copy of the plaint, release deed dated 15.10.2001 and written statement in some other suit challenging the release deed, whereas the defendants brought on record documents Ex.D1/1, Ex.D1/1A, Ex.D1/2 to Ex.D1/5.

Mr. Namit Gautam, learned counsel appearing on behalf of the appellant-plaintiff submitted that the old jamabandies reflected that the property was inherited by Norang Singh from his father Nathu Ram, therefore, it was ancestral in nature. Ran Singh did not have pre-existing right and, therefore, the decree required registration. Dismissal of the previous suit challenging the release deed executed by Norang Singh in favour of his grand son was immaterial.

I am afraid, the aforementioned arguments are not sustainable, for, the judgment in the previous suit asserting the right by birth being the nature and the character of the property as ancestral was not challenged. Even if in the previous round of litigation, Norang Singh admitted the nature of the property to be ancestral. It was obligatory upon the plaintiff to establish the same to be ancestral. By inheriting the property from Nathu Ram, plaintiff cannot be a 4th generation in lineage as he was 3rd generation.

Fourth generation had a right by birth by proving the property as ancestral

in nature. The plaintiff had no locus standi to challenge the decree being unregistered as was not effected when Norang Singh was alive. All these factors have been pondered upon by the courts below. The judgments and decrees cannot be said to be suffering from any illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

February 25, 2019
ramesh

(AMIT RAWAL)
JUDGE

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