

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

RSA-707-1990 (O&M)

Date of decision : 14.09.2022

Amrik Singh and Others

... Appellant(s)

Versus

Gurmukh Singh and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Maninder Singh Saini, Advocate for
Mr. A.S. Kalra, Advocate for the appellants.

Mr. C.L. Sharma, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

The present regular second appeal has been filed by the plaintiff-appellants against the concurrent findings of both the Courts below dismissing the suit of the plaintiff-appellants for declaration to the effect that the plaintiff-appellants were the owners in possession of land measuring 14 kanals 14 marlas comprised in Rect.17 Killa 8 (5-11), R 5 Killa, 5/1 (4-0), 13 (7-8), 18 (0-15), Khasra No.36/4 (1-0), situated in Village Dhariwal Khishian Tehsil Gurdaspur with consequential relief of permanent injunction restraining the defendants from interfering with the possession of the plaintiff-appellants except in due course of law.

The brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit for declaration on the ground that the property was joint Hindu ancestral property of the plaintiff-appellants and that defendant-

respondent Nos.4 and 5 had no right, title or interest in the said property and the sale deed executed by them in favour of defendant-respondent Nos.1 to 3 was not binding on the rights of the plaintiff-appellants. The suit was contested by the defendant-respondent Nos.1 and 2. It was averred that defendant-respondent Nos.4 and 5 were owners of the suit land as they had inherited the property from their deceased father who died intestate. The replication was filed. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiffs are the sole owner in possession of the suit-land ? OPP
2. Whether the plaintiffs are entitled to the declaration prayed for ? OPP
3. Whether the plaintiffs are entitled to the injunction prayed for ? OPP
4. Whether the suit is not maintainable in the present form ? OPD
5. Relief.

The Trial Court held that there was no evidence on the record to prove that the property was ancestral in nature. Aggrieved by the said judgment and decree dated 11.05.1988, an appeal was preferred by the plaintiff-appellants which also met with the same fate vide judgment and decree dated 24.11.1989 passed by the lower Appellate Court. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellants would contend that the property was inherited from Labh Singh i.e. grandfather of the plaintiff-appellants and hence, it was ancestral in nature. Learned counsel for the plaintiff-appellants has further relied upon the *jamabandis* (Ex.P1 and Ex.P2) and mutation (Ex.P3) to contend that the property stood originally in the name of Labh Singh and, thereafter, was mutated in favour of Shiv Singh and his brothers and, hence, it was adequately proved that the property was ancestral in nature.

Per contra, learned counsel for the defendant-respondents has contended that though the property originally stood in the name of Labh Singh, however, as per the mutation (Ex.P3) the property was mutated in the name of three sons of Labh Singh i.e. Shiv Singh, Dalip Singh and Karam Singh on the basis of a Will. Since the property was mutated in the name of Shiv Singh, Dalip Singh and Karam Singh on the basis of a Will, hence, it cannot be held to be ancestral in nature.

Heard.

In the present case both the Courts below have returned concurrent findings of fact that the suit property was not ancestral in nature. It is come in the judgment of the Trial Court that Gurnam Singh (plaintiff-appellant No.2) had stated in his examination-in-chief that the property originally stood in the name of Labh Singh, their grandfather, and after his death their father became the owner which subsequently devolved on the plaintiff-appellants. However, in his cross-examination he goes on to state that the suit land had since been partitioned between them and Gurmukh

Singh (defendant-respondent No.1) and that they had also taken possession of their shares. It is also an admitted position that after Labh Singh the property devolved on his three sons on the basis of a Will as per the mutation entry (Ex.P3). Learned counsel for the plaintiff-appellants has not been able to show any evidence on the record which would even remotely point to the suit property being ancestral in nature.

In view of the discussion above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less, substantial question of law, arises in the present regular second appeal. The appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

14.09.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO