

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

**RSA No.1726 of 2022 (O&M)
Date of decision: 24.08.2022**

Virender (now deceased) through LR Amit Chauhan

..... Appellant

Versus

Rajbir Singh Chauhan and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Chandandeep Singh, Advocate
for the appellant.

Mr. Gopal Sharma, Advocate
for respondent No.1/caveator.

TRIBHUVAN DAHIYA J.

This is a appellant/defendant's second appeal in a suit for declaration that plaintiffs and defendants No.6 to 8 have equal rights in the suit property by birth, as the suit property was ancestral in nature, and the judgment and decree dated 05.09.1991 with respect to the suit property is invalid, null and void.

2 Brief facts of the case are that the respondents/plaintiffs and defendants constitute a Joint Hindu Family and are governed by the Hindu law. The suit property, agricultural land measuring 8 Kanals, was ancestral property of the plaintiffs' father. During his lifetime, Virender Singh, predecessor-in-interest of defendants No.1 to 5 played a fraud on the plaintiffs as well as Hari Kishan, their father, by obtaining a

fraudulent collusive decree dated 05.02.1991 in civil suit bearing No.52 of 1991 titled Virender Singh vs. Hari Kishan, in respect of suit property by ignoring the plaintiffs and defendants No.6 to 8, who had a birth right in property being real sons of Hari Kishan.

3. The fact that the property was ancestral in nature had been admitted in the written statement filed by defendants No.1 to 5. The suit was decreed by the trial Court with costs and collusive judgment and decree dated 05.02.1991 was declared null and void. The appeal preferred by the defendants against the same was dismissed by the lower Appellate Court vide judgment and decree dated 29.11.2021.

4. Learned counsel for the appellant has argued that the suit land was not ancestral and therefore, the trial Court as well as the lower Appellate Court have decided the issue on wrong facts. He further contends that despite admission by defendants No.1 to 5 that the property was ancestral in nature, the plaintiff was required to prove by leading evidence that the suit land was ancestral property.

5. The argument raised by learned counsel for the appellant is without merit and deserves to be rejected on the ground that an admitted fact need not be proved by leading any evidence. Once the factum of the suit property being ancestral stands admitted in the written statement itself, there is no requirement for the plaintiffs to lead any evidence to that effect.

6. Besides, it has been duly recorded by the lower Appellate Court on the basis of documentary evidence on record that the suit property was ancestral in nature, which was coming by way of natural

succession from the four degrees of fore fathers, and Hari Kishan had no right to execute the collusive decree. The findings recorded in para No.13 of the judgment of the lower Appellate Court are as under:-

“The plaintiffs have challenged the decree on the grounds that the suit property was ancestral in nature in the hands of Hari Kishan and the plaintiffs and defendants No.6 to 8 had a birth right in the suit property. Harikishan was not competent to execute the decree of suit property in favour of Virender and the decree is result of fraud upon Hari Kishan as well as Court. The plaintiffs and defendants No.6 to 8 were not impleaded as parties to the said suit. The plaintiffs in order to discharge their onus have relied upon the Excerpt (Int Khab) Ex. PW2/A which clearly established that the property devolved by natural succession from Kallu to Roop Ram and from Roop Ram to Harikishan. The property, therefore, in the hands of Hari Kishan was ancestral qua the plaintiffs, Virender Singh and defendants No.6 to 8, had equal share in the suit property and had also birth rights in the suit property. Since, the property was ancestral in nature, Hari Kishan could not have suffered a decree of the same in favour of one of his son by excluding and ignoring his other children. Even if, it is presumed that Hari Kishan was the Karta of the Joint Hindu Family consisting of Hari Kishan, his sons and daughters, then also, he was entitled to alienate the suit property only for legal necessity, pious obligation and for betterment of the suit property. Hari Kishan was not competent to suffer a decree in favour of his son Virender Singh, ignoring his other sons and daughter.”

The well reasoned findings of the lower Appellate Court do not call for any interference. Besides, no substantial question of law

arises for consideration, nor any could be pointed out by learned counsel for the appellant.

Dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

24.08.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No