

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

103

**RSA No. 1440 of 2021 (O & M)
Date of decision : 9.9.2022**

Parsanni Devi and others**.....Appellants****Vs.****Sohan Lal (deceased) through his LRs****.....Respondents****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Rishi Pal Singh, Advocate, for the appellants

TRIBHUVAN DAHIYA, J. (Oral)

1. It is plaintiffs' second appeal against the concurrent findings recorded by the trial Court as well as the lower appellate Court.
2. The facts in brief are, the appellants/plaintiffs filed a suit for declaration that sale deed dated 5.12.2002 and the subsequent mutation and other entries in the *jamabandis* are illegal, null and void. The consequential relief of permanent injunction restraining the defendant from alienating the suit land was also sought. It has been, *inter alia*, pleaded that one Pirthi son of Ala Ram was the predecessor in interest of the plaintiffs, and was recorded as owner in possession of the land in dispute. The land was ancestral and the plaintiffs had a pre-existing right in it. It was further pleaded, as Pirthi was not having any source of irrigation, he during his lifetime, gave the said land on lease to the respondent/defendant, who had been regularly paying lease money of the said land to Pirthi. He died on 1.12.2009. Thereafter, the defendant started giving lease money to the plaintiffs. But now after harvesting of paddy crop of 2012, he refused to

give lease money and asserted his ownership over the suit land, resulting in filing of the instant suit for declaration.

3. The defendant submitted that the suit land has been purchased by him from husband of plaintiff No.1 and father of plaintiffs No.2 to 4 by sale deed dated 5.12.2002 for a sale consideration of Rs.64,500/- and mutation to that effect was duly entered and sanctioned. His name has been incorporated in the revenue record/*jamabandi* on that basis. The said land was sold by Pirthi to the defendant of his free will, for due consideration.

4. Both the Courts below have held that no evidence was led by the appellants/plaintiffs to prove the nature of the property being ancestral. Therefore, they have no right to challenge the sale deed on the ground that it was executed without any legal necessity. Besides, the sale deed being a registered public document, which was in the knowledge of the appellants/plaintiffs. Its mutation was entered after due public notice. It was also held that Pirthi became owner of the property in question on the basis of a Civil Court decree dated 7.8.1985, Ex.D-5; therefore, there is no question of any pre-existing right of the plaintiffs. The well reasoned findings of the lower Appellate Court in this regard are as under,

18. In the present case, first of all this court has to see as to whether the land in question is ancestral property or not? Ex.D3 is the copy of plaint in case titled as **Pirthi vs. Assa Ram etc. bearing case no. 359/1984**, which goes to show this fact that Prithi has filed the suit for possession by way of pre-emption, which was decreed by the judgment and decree dated 7.8.1985 passed by the court of the then learned Sub Judge, Karnal, certified copy of the judgment and decree dated 7.8.1985 are Ex.D4 and D5, which are on the file and on the basis of judgment and decree Ex.D4 and Ex.D5, the mutation no. 625 Ex.D3 was entered and sanctioned in favour of Pirthi. It is worthwhile to mention here that Pirthi has become owner in possession of the land by the dint of judgment and decree dated 7.8.1985 Ex.D4 and Ex.D5 passed by the court of the then learned

Sub Judge, Karnal. So, the plaintiff has failed to prove on the file that the land in question was ancestral in the hands of Pirthi. Rather, it has come on the file that the land in question was a self acquired property of Pirthi and it has been sold to the defendants by the dint of sale deed Ex.P1/Ex.D/1 bearing vasika no. 4818/1 dated 5.12.2012 and the mutation Ex.D2 bearing no.700 was also entered and sanctioned in favour of the defendants. So, the plaintiffs have not led any evidence to prove the nature of the land in question as ancestral. In the absence of any proof of the land in question being the ancestral property, the plaintiffs have no locus standi to challenge the sale deed Ex.P1/Ex.D1 on the ground that the sale deed was executed without any legal necessity. The question of legal necessity would have been relevant only when the plaintiffs have proved that the land in question is ancestral one. The plaintiffs have also nowhere denied the thumb impression and photograph of Pirthi on the registered sale deed Ex.D1. So, no question of impression qua the execution and registration of the sale deed arises.

5. It is well settled in law that nature of the property being ancestral has to be proved on record by leading positive evidence, that it has been inherited by co-parceners of a Hindu Joint Family from four generations. No such evidence is on record.

6. In view of the aforesaid, the judgments of the Courts below do not suffer from any error of law and call for no interference. No substantial question of law arises for consideration either.

7. Dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

9.9.2022

Ashwani

Whether Speaking/Reasoned :	Yes/No
Whether Reportable :	Yes/No