

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

RSA No.112 of 2020(O&M).

Reserved On:27.07.2023

Decided on:11.08.2023

Bhagat Singh (deceased) through LRs

...Appellant

Versus

Dhan Raj (Minor) through father/natural guardian and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. M.S.Tewatia, Advocate
for the appellant.**

ANIL KSHETARPAL, J.

1. The correctness of the concurrent findings of fact is assailed by the legal representatives of plaintiff no.2 in this second appeal.

2. A suit for grant of decree of declaration to the effect that the release deed/transfer deed executed by their father in favour of his grand children (the sons of Daryav Singh) on 05.06.2009, with respect to 18 kanals land is not binding on the rights of the plaintiffs. It was claimed that the suit property is ancestral and the aforesaid transfer deed is the result of undue influence and collusion of defendant no.1 and 2 with the officials of the sub-Registrar by taking undue advantage of the innocence and illiteracy of defendant no.3.

3. Defendant no.3-Dharam Singh was impleaded as a party in the suit. A joint written statement was filed by the defendants no.1 to 3 in which it was claimed that the transfer deed is a genuine document and

Daryav Singh (father of defendant no.1 and 2) was taking care of Dharam Singh for the last 12 years. He has also repaid the entire loan which was taken by Dharam Singh and has also redeemed the mortgaged property by paying the amount. He has also cleared various loans taken by Dharam Singh and has spent Rs.1,50,000/- on the treatment of Dharam Singh.

4. As already noticed, both the courts below have dismissed the suit.

5. This Bench has heard the learned counsel representing the appellant and with his able assistance perused the paper book.

6. The learned counsel representing the appellant has filed a written note of his submissions. The relevant extract of the written note of the submissions filed by the learned counsel representing the appellant is reproduced as under:-

“3. That the said relinquishment deed was the result of fraud played upon by the defendants on plaintiffs/appellants as the relinquishment deed was executed by fraudulently taking the thumb impressions of defendant no.3 on the pretext of submitting enrolment form for the old age pension. That the defendant no. 3 was not well on dated 5.6.2009 he was first taken to Government Hospital Palwal where he was got treated by doctor and thereafter, he was taken to tehsil office Palwal therein the said relinquishment deed was executed.

4. That the both Ld. Court below have failed to appreciate the factual position that the land in question is ancestral land. It

is clearly reflected that the land came into the name of Dharam Singh Defendant no.3 by the way of inheritance.

5. That it is clearly reflected in the Record of rights i.e Jamabandi, Mutation etc that forms part of original plaint and they clearly reflect the factual position that the land in question was shown to be in ownership and possession of one Umrao and it was inherited by Bhoja (his son) then it was inherited by One Chandi.

6. That admittedly Defendant no. 3 Dharam Singh inherited the same from Chandi (his father) and it is matter of common parlance that when a son inherits the land from his father it is by way of inheritance and qua the Petitioners/ appellant (Grand Son of Chandi and Sons of Dharam Singh) the lands ancestral in nature and therefore they got their interest created in the land by birth.

7. Admittedly, Dharam Singh was son of Chandi and the only way he could have inherited the land from his father was by way of inheritance and therefore there is nothing on record to suggest otherwise.

8. Dharam Singh Defendant no. 3 had no right to alienate such land

9. That the ld. courts below wrongly held that the suit property was not ancestral for two reasons.

- Firstly, the Ld. Courts below relied upon the Mutation no138 (Ex PS) which shows that the suit property was inherited by Chandi from Bhoja. Mutation no. 3223 sanctioned on 31.12.1981 shows that the defendant no.3 had received the suit property from Chandi in furtherance

of Judgment and decree dated 19.9.81. The copy of said judgment and decree has not placed on file. Therefore, the Ld. Trial court assumed that it is not clear as to what type of civil suit was the suit property received by Dharam Singh from his father.

- It is submitted that the Dharam Singh was son of Chandi and irrespective of type of suit the only way he could have inherited the property from his father was by way of inheritance as the land of same measurement is got inherited by him. The financial condition of Dharam Singh was not good as he had taken numerous loans over the suit property and therefore, it is evident that he was not in position to purchase or self-acquired such a large chunk of land.

- Moreover, mutation is not the proof of title and it only shows the factum of change of ownership or otherwise of the land. The law is settled that the mutation cannot be a proof of title. The learned courts below have wrongly focused the whole substance on the said mutations and completely lost focus of the fact that the Dharam Singh was the son of Chandi and he has inherited the suit property from Chandi and Dharam Singh being son of Chandi and the Plaintiffs/appellants being the son of Dharam Singh the same land is ancestral qua them. Therefore, defendant ro. 3 had no right to relinquish his own rights qua the suit land as he himself had no authority to do the same. Therefore, the impugned judgment of the Ld. Court s below is liable to set aside and the appeal of the appellant is entitled to be allowed.

-The plaintiffs/appellants have placed on file all the relevant land record, sale deed, mutation and Jamabandi to prove their case but both the Ld. Courts below have completely ignored the same and not appreciated the correct position of facts and circumstances

- Secondly, that only because the Jamabandi of consolidation was not placed on record as the numbers of the land was not the same the assumption that the land was not ancestral is not correct and the same is made in crude isolation excessively relying upon the ignoring the other material on record.

10. The land in question is huge chunk of land and given the financial position of Dharam Singh who was indebted and have taken numerous loans by mortgaging the land in question as it is

proved by the Defendants themselves before the courts below (SEE PARA 4 at Page no. 17 of the petition of RSA no 112 2020) it would be very illogical to assume that having such a bad financial position Dharam Singh could have self-acquired (purchased) such a huge chunk of land. Dharam Singh (defendant no. 3 was neither literate nor employed).

11. That it is pertinent to mention that the parties to suit have admitted the fact that the suit property was ancestral in nature and the same is proved in unambiguous terms. The perusal of the relinquishment deed dated 5.6.2009 in itself sufficient to show that the suit land was ancestral as the defendant no 3 while executing the same has mentioned that the property is ancestral property and therefore, knowing the fact that the property is ancestral and he got no right whatsoever to relinquish the same he illegally and executed the relinquishment deed which has no standing in the eyes of law and at the very first instance the same is void and therefore the Id. Courts below have committed grave error in law and failed to appreciate the evidence of the plaintiffs.

12. The defendants have not placed even a single piece of evidence to the effect that the suit land was self-acquired property of Dharam Singh and not the ancestral.

13. It is further worthwhile to mention that During the cross-examination Defendant no.1 admitted that the suit property was

ancestral in nature.

-That it is settled law and the Hon'ble Supreme court time and again held that the admission is the best piece of evidence. The defendant no. 1 has admitted that the land was ancestral. The defendant no.1 and 2 got the relinquishment deed dated 5.6.2009 executed even knowing the fact that the same was ancestral and can not be relinquished by Defendant no 3 in their favour. Therefore, the relinquishment deed dated 5.6.2009 has no validity in the eyes of law and the same is illegal and void.”

7. This court has considered the submissions and analyzed the arguments of the learned counsel representing the parties.

8. It has come on record that in the year 1995, Sh. Dharam Singh entered into a family settlement with his three sons, namely, Sh. Daryav Singh, Sh. Bhagat Singh and Sh. Rattan Singh. Sh. Bhagat Singh and Sh. Rattan Singh are the plaintiffs in this suit. In that aforesaid settlement it was agreed that Sh. Dharam Singh will distribute the property amongst all the three sons in equal share. Thereafter, on 25.08.1995 a civil Court decree acknowledging the family settlement was passed. Subsequently, the plaintiff no.2, namely, Sh. Bhagat Singh got executed a lease deed for 99 years with respect to some property from defendant no.3 in his favour on 16.03.1998. After one year, Sh. Bhagat Singh sold the rights in favour of Smt. Harwati wife of Sh. Daryav Singh. Sh. Dharam Singh also executed a Will in favour of defendant no.1 and 2 (his grand children) on 07.09.2009. It has also come in evidence that Sh. Dharam Singh received the suit land from Shri Chandi through a civil court decree dated 19.09.1981. Smt. Kamlesh, the widow of Sh. Dharam Singh, while appearing in evidence on behalf of the plaintiffs, admitted that the suit property is self acquired property of Sh. Dharam

9. With reference to first argument, it may be noted that the plaintiff did not examine the doctor to prove the nature of illness of late Sh. Dharam Singh and the period spent by him in the hospital.

10. With reference to the second argument, it may be noticed that the plaintiff failed to prove that the land in dispute was inherited by Sh. Dharam Singh from his forefather. In fact, the plaintiffs failed to connect the suit land with that ancestral land. Moreover, there was family settlement carried at on 31.07.1995, and subsequently a consent decree was passed on 25.08.1995 distributing the property equally amongst the three sons. Moreover, the plaintiffs also received certain land from grandfather through a civil court dated 19.09.1981. In such circumstances, the entire land stood divided and hence, the property cannot be said to be ancestral property.

11. The next argument of the learned counsel needs no deliberation in view of the foregoing discussion.

12. As regards the failure to place on record the judgment and decreed dated 19.09.1981, it may be noted that the plaintiffs have not led any evidence to prove that the mutation no.3223 sanctioned on 31.12.1981 was wrong. The revenue officials sanctioned the mutation in discharge of their public functions.

13. As regards the argument of learned counsel that defendant no.1 admits that the property to be ancestral, it may be noted that nature of the property being ancestral does not depend upon the admission of a party. It is required to be proved. Moreover, Smt. Kamlesh, the widow of Dharam

Singh has admitted that the property is self acquired. Hence, the courts on preponderance of probabilities have formed an opinion.

14. In view of the aforesaid facts and discussion, there is no ground to interfere.

15. Dismissed.

16. All the pending miscellaneous applications, if any, are also disposed of.

11th August, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO