

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

128

2023:PHHC:117658

**RSA-3448-2018(O&M)
Date of decision: 06.09.2023**

HARSHDEEP SINGH

..Appellant

Versus

**UJJAGAR SINGH (SINCE DECEASED)
THROUGH LRS AND ORS.**

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Mohan Gupta, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. The correctness of the findings of facts arrived at by the Courts below is assailed in this second appeal by the plaintiffs.

2. Their suit for grant of decree of possession, declaration and permanent injunction has been dismissed by both the Courts below. The entire suit of the plaintiffs is based upon the plea that the property is a joint hindu family coparcenary property apart from being an ancestral property. It has come on record that Sh. Sardara Singh executed a Will bequeathing his property in favour of Sh. Ujjagar Singh, Sh. Kesar Singh and Sh. Lachhman Singh. The plaintiffs' father died in the year 1997. Thereafter, the plaintiffs' along with their mother shifted and walked away from the matrimonial home. The plaintiffs severed all of their connections with the matrimonial house. In the meantime, Sh. Ujjagar Singh sold the property to defendant No.5 to 11 vide sale deeds dated 18.10.1999, 15.10.1999, 15.01.2002, 23.04.2002 and 03.04.2002. The plaintiffs' claim that the aforesaid sale deeds are without any legal necessity. It has come on record that after selling the property, the defendants utilized the money for purchasing the other

agricultural land. The plaintiffs failed to prove that the property is ancestral

as the excerpt produced by them was not proved as they failed to examine Sh. Charan Dass, Kanungo, who translated the documents, which were written in Urdu language.

3. The learned counsel representing the appellant contends that the First Appellate Court erred in dismissing the application under Order XLI Rule 27 of the Code of Civil Procedure, 1908, as some of the sale deeds have been executed by Sh. Ujjagar Singh in favour of his daughter-in-law and wife.

4. This Court has considered the submissions of the learned counsel representing the appellant.

5. The settlement dated 18.03.1999, was in the knowledge of the appellant as it was pleaded by them while filing replication. However, they did not take steps to prove the same before the trial Court.

6. The First Appellate Court has held that it would not be appropriate to allow the application for additional evidence as the appellant does not fulfill the parameters laid down in Order XLI Rule 27 of the Code of Civil Procedure, 1908. This Court does not find that such conclusion by the First Appellate Court is erroneous.

7. As regards the second argument, it may be noticed that the appellant's case based on ancestral joint hindu family and coparcenary property. It has come on record that Sh. Ujjagar Singh, Sh. Kesar Singh and Sh. Lachhman Singh inherited the property from Sh. Sardara Singh by way of registered Will dated 28.10.1976. The correctness of the aforesaid Will has never been questioned. Once, the property was received by Sh. Ujjagar

Singh on the basis of the Will, the Courts have correctly held that the plaintiff has failed to prove that the property is ancestral.

- 8. Hence, no ground to interfere is made out.
- 9. Dismissed accordingly.
- 10. All the pending miscellaneous applications, if any, are also disposed of.

September 06th, 2023 (ANIL KSHETARPAL)
Ay JUDGE

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