

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.97 of 2023 (O&M)

Reserved on:16.11.2023

Date of Order:08.01.2024

Narender and another

.Appellants

Versus

Mahender Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kul Bhushan Sharma, Advocate
for the appellants.

ANIL KSHETARPAL, J

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.*

2. The plaintiffs have filed this second appeal to assail the concurrent findings of fact arrived at by the courts below while dismissing their suit for grant of decree of declaration that they are the joint owners in possession of the property to the extent of 1/5th share of the suit land. They have also challenged the correctness of the registered relinquishment deed dated 21.03.2011, executed by late Sh. Sukhi Ram in favour of his son Mr. Mahender Singh, defendant no.1. Their suit is based on the fact that the property is a Joint Hindu Family Coparcenary Property and the plaintiffs have acquired the rights in the property since their birth.

3. Both the courts on appreciation of evidence have found that late

Sh. Sukhi used to reside with Mr. Mahender Singh and the parents of the plaintiffs were living in Ballabgarh City for the last 42 years. It has also come in evidence that late Sh. Sukhi became an owner of some part of the suit land through the registered gift deed dated 01.08.1987, executed by his aunts (father's sisters). Thus, both the courts have dismissed the suit as the defendants proved the execution of the registered deed by examining Sh. Om Pal from the Registrar's office, Sh. Ganga Ram, the scribe, Sh. Ranvir and Sh. Amar Chand, the attesting witnesses of the aforesaid documents.

4. Along with the appeal, an application under Order XLI Rule 27 CPC has been filed for seeking permission to produce the copy of mutation no.3039. It has been submitted that no prejudice shall be caused to the defendants, if the application is allowed as the document is sought to be produced to clear the ambiguity.

5. This court has considered the submissions of the learned counsel representing the appellant.

6. Even if the mutation entry is taken into consideration, it is evident that the parents of the plaintiffs were not staying in the village for more than 40 years. In such circumstances, existence of a Joint Hindu Family is doubtful. Moreover, it has come in evidence that some part of the land was gifted to late Sh. Sukhi by their aunts. The entire property is in a hotchpotch. No effort has been made to distinguish the property which was received through the gift deeds. It is the duty of the plaintiffs to identify the ancestral property, if the self acquired property and the ancestral land is mixed up. In the judgment passed by the Hon'ble Supreme Court in **Mara and others vs. M.S.T Nikko alia Punjab Kaur, AIR 1964 SC 1821**, it has been held that if the ancestral and non-ancestral land/properties are so mixed

up, that identification of property is not possible, in these circumstances all the properties shall be considered non-ancestral.

7. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.
8. Dismissed.
9. All the pending miscellaneous applications, if any, are also disposed of.

08th January, 2024

(ANIL KSHETARPAL)

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JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO