

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2255 of 1989 (O&M)

Date of Order:31.01.2024

Mam Chand (since deceased) through LRs

.Appellant

Versus

Partap Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Kulwant Singh, Advocate
for the appellant.**

ANIL KSHETARPAL, J

1. In this regular second appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by the courts below while dismissing his suit for grant of decree of declaration or in the alternative relief of possession by way of pre-emption.

2. While claiming to be the adopted son of Sh. Gorkha (defendant no.3), the plaintiff claims that the sale deed executed by Sh. Gorkha on 19.11.1982, in favour of defendant no.1 and 2, is not binding on his rights. The plaintiff claims that the aforesaid property was ancestral and hence defendant no.3 had no right to dispose of the same.

3. Defendant no.3 while contesting the case claimed that the plaintiff is son of Sh. Mouji Ram and was never adopted by him. He also denied gifting of any land to Sh. Fateh Singh, Sh. Randhir Singh and Sh. Jai Bhagwan, three sons of the plaintiff. He also claims that the property is self acquired and it has been sold for a legal necessity.

4. Though, both the courts have held that the plaintiff have failed to prove his adoption by Sh. Gorkha, however, the aforesaid finding is not

based on proper appreciation of the evidence. The plaintiff has served in the Army as well as in the Police. As per the service record and discharge certificate, the plaintiff is son of Sh. Gorkha. Furthermore, it is proved that in the year 1982, Sh. Gorkha by way of a consent decree acknowledged Sh. Fateh Singh, Sh. Randhir Singh and Sh. Jai Bawan, three sons of the plaintiff as his grand children and acknowledged them to be owner of 19 kanals and 3 marlas of land. However, there will be no impact on the result of the case because the plaintiff is required to cross yet another hurdle before he can be granted any relief. Hence, it is not considered appropriate to devote time and energy on the legality of the adoption and this question is left open.

5. It has come on record that Sh. Gorkha had originally acknowledged by way of family settlement that Sh. Fateh Singh, Sh. Randhir Singh and Sh. Jai Bhagwan, sons of the plaintiff became owner of 19 kanals and 4 marlas of land. Thus, it is evident that there was division between the family. Further, there is no evidence to prove that Sh. Gorkha was living with the plaintiff or his family as his name was neither included in the ration card nor in the voter list. Still further, it has come in evidence that Sh. Gorkha was a 'Jat' belonging to old Rohtak district. In *Sube Singh vs. Kanhaya, (1964) 2 SCR 899*, it was held by the Supreme Court that amongst Jats of Rohtak District, the courts have consistently held the power of a holder even where he has sons to alienate ancestral property for consideration is unrestricted.

6. Moreover, both the court have found that the property was sold to pay of the debt and therefore it was for legal necessity.

7. Keeping in view the aforesaid facts and discussion, no ground

to interfere is made out.

8. Dismissed accordingly.
9. All the pending miscellaneous applications, if any, are also disposed of.

January 31, 2024

(ANIL KSHETARPAL)

nt

JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO