



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

**RSA No. 2252 of 2018 (O&M)
Date of Decision: 08.05.2025**

Jaswant Singh

...Appellant

Versus

Baljit Kaur and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Manoj Pundir, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

1. This is plaintiff's second appeal against the judgment and decree dated 25.04.2017 passed by the Court of Additional District Judge, Rupnagar, dismissing the appeal filed against the judgment and decree dated 30.01.2015 passed by the Court of Additional Civil Judge (Sr. Division), Rupnagar, vide which the suit for possession and permanent injunction filed by the plaintiff was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff (Jaswant Singh) instituted a suit for possession of the suit land (fully described in the plaint), claiming the same to be Joint Hindi Family Coparcenary Property. He laid challenge to the sale deed dated 26.05.2005 executed by defendant No.2 (Gurmukh Singh, father of the plaintiff) in favour of defendant No. 1 stating the same to have been executed without any legal necessity and consideration. The case set up was that the suit land was Joint Hindu Family Coparcenary Property, having been inherited from a common ancestor Talok Singh. As a result of the

same, the plaintiff had an interest and share in the same by birth. It was averred that defendant No.2, who was the *Karta* of the joint family and was the son of Basta Singh had executed a sale deed dated 26.05.2005 in favour of defendant No.1 without there being any legal necessity. It was averred that he had no right to alienate the suit land. Since he did not admit the claim of the plaintiff, the suit was instituted.

4. Defendant No.1 resisted the suit claiming that the plaintiff had earlier sold ancestral property to one Nachhattar Singh and Sewa Singh. He had also sold 25 Bighas of land at Village Boor Majra and other ancestral land at Village Lutheri. It was averred that relationship between the plaintiff and defendant No.2 was not cordial and both sides had moved applications to the police many times. The defendant No.2 rightly sold the suit property to defendant No.1 since the plaintiff had not been giving any money to defendant No.2.

5. Defendant No.2 initially put in appearance but subsequently was proceeded against *ex parte* since he did not appear.

6. In the replication filed to the written statement filed by defendant No.1, the averments made in the same were denied and those made in the plaint were reiterated.

7. From the pleadings of the parties, the following issues were framed:-

- “1. Whether, suit property is Joint Hindu Family Co-Parcenary Property? OPP
2. Whether, sale deed dated 26.05.2005 executed by defendant No.2 in favour of defendant No.1 is illegal, null and void being without legal necessity? OPP

3. Whether, plaintiff is entitled to the possession of the land measuring 7K-10M being coparcener? OPP
 4. Whether, suit is maintainable in the present form? OPP
 5. Whether, plaintiff has not come to the Court with clean hands? OPD.
 6. Whether, plaintiff has no locus standi to file the present suit? OPD
 7. Whether, suit is bad for non-joinder and mis-joinder of necessary parties? OPD
 8. Relief.”
8. Parties led their respective evidence. The trial Court dismissed the suit for possession vide judgment and decree dated 30.01.2015 and the appeal filed against the same was also dismissed on 25.04.2017 by the Court of Additional District Judge, Rupnagar, leading to the filing of the present Regular Second Appeal.
9. I have heard learned counsel for the appellant.
10. Learned counsel for the appellant submits that it had been proved on record that the suit property was ancestral property and, therefore, defendant No.2 had no right to alienate the same. Learned counsel has referred to the oral and documentary evidence led on the record.
11. I have considered the submissions made by learned counsel for the appellant.
12. Concededly, the suit land was earlier owned by Basta Singh. It was transferred in favour of Gurmukh Singh, Dilbagh Singh and Ajmer Singh on the basis of a Will dated 03.09.1970 and accordingly mutation Ex.P21/A/1 was sanctioned. The plaintiff-Jaswant Singh is the son of Gurmukh Singh (defendant No.2). Once Gurmukh Singh had received the property by way of testamentary succession and not by way of inheritance,

the suit property could not be said to be ancestral/Joint Hindi Family Coparcenary Property. This apart, PW-2-Joginder Singh, Special Kanungo admitted in the cross-examination that the pedigree table had not been prepared by him and he was not aware as to whether the suit property was ancestral or not. It is settled law that the ancestral character of a property has to be proved by leading cogent evidence and the said issue cannot be decided on the basis of presumptions. Both Courts rightly non-suited the appellant on this very ground. I do not find any reason whatsoever to interfere with the said findings in second appeal.

13. As a result of the aforesaid, the appeal is found to be bereft of merit and is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

May 08, 2025
Rekha

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