



RSA-3639-2018 (O&amp;M)

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

(105)

RSA-3639-2018 (O&amp;M)

Date of decision:- 15.01.2025

Kulwant Singh

...Appellant

Versus

Harbhajan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Gurpreet Jayia, Advocate  
Legal aid counsel (HCLSC)  
for the appellant.

...

**SUVIR SEHGAL, J. (Oral)****CM-9461-C-2018**

For the reasons given in the application, it is allowed.

Delay of 17 days, in the filing of the appeal, is condoned.

**RSA-3639-2018 (O&M)**

1. Aggrieved with the judgments and decrees passed by two Courts, appellant-plaintiff has approached this Court by way of instant second appeal.
2. Pleaded case of the plaintiff is that the suit property was owned by Saudagar, predecessor of plaintiff as well as defendants No.1 and 2. Suit property was inherited by defendant No.1 and defendant No.2 is plaintiff's brother. Under the influence of defendant No.2, who is residing in Calcutta, for the last 40-45 years, defendant No.1 alienated some portion of the suit property



to Sukhjinder Singh and Harjit Singh, without any legal necessity to defeat the rights of the plaintiff in the property. A civil suit has been filed by the plaintiff, which is pending, wherein defendant No.1, submitted an affidavit in favour of the plaintiff, but still the defendants proceeded to dispose of the suit property. Upon notice, defendants No.1 and 2, filed a joint written statement, contesting the suit by taking various preliminary objections and denied the ancestral nature of the suit property. It was averred that the plaintiff had been misbehaving with defendant No.1, who had registered a criminal case against him and had disinherited him. The sale of property in favour of Sukhwinder Singh and Manjit Singh, was admitted. A separate written statement was filed by defendants No.3 and 4, claiming that they were bona fide purchasers of 4 kanal land for due consideration and without notice, by virtue of sale deed dated 06.02.2008. Plaintiff filed replication and controverted the stand taken by the defendants in their written statement. After contest, the Trial Court by judgment and decree dated 20.01.2017, dismissed the suit. Plaintiff remained unsuccessful in the first appeal, which was rejected by the learned District Judge, Rupnagar, vide judgment dated 25.10.2017, resulting in institution of the present appeal.

3. Counsel for the appellant has contended that without adverting to the evidence led by the appellant, the Courts below have dismissed the suit erroneously on the ground that the dispute has been settled inter se the parties in the previous litigation.

4. I have considered the submissions of the counsel for the appellant as



5. An examination of the Trial Court record shows that the appellant had earlier filed a suit for declaration/joint possession of the suit property, claiming that he along with defendants No.1 and 2 formed a Joint Hindu Family. He asserted that the property was coparcenary in which he had 1/3<sup>rd</sup> share. Sale Deed dated 21.04.2004, executed by respondent No.1, in favour of one Kaka Singh, whereby he sold a part of the land, was challenged. Plaintiff also sought a permanent injunction against respondents No.1 and 2, restraining them from alienating the suit property. The suit was contested by the respondents and after trial, by judgment and decree dated 30.05.2012, Ex. P-6, the Trial Court dismissed the suit. An appeal filed by the appellant was dismissed by the learned Additional District Judge, Ropar, by judgment dated 25.01.2013, Annexure P-X/2, and a second appeal before this Court in RSA-3673-2013, met the same fate on 28.04.2016. Repelling the arguments raised on behalf of the appellant, this Court observed as under:-

*“I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and substance in the plea of learned counsel for the appellant, for, neither any Excerpt or pedigree table has been brought on record. The High Court Rules and Orders have been interpreted by this Court in **Banta Singh & others Vs. Phuman Singh and others 1972 PLJ 275** but the same have not been complied. The person being fourth generation in lineage can assert right by birth. Three generation preceding to the person are required to succeed the property. Having failed to lead such evidence, I am of the view that the appellant-plaintiff has failed to discharge the onus. Mere admission in the cross-examination would not dispense with discharging the onus regarding nature and character of the property.*

*I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.*



*No substantial question of law arise for determination by this Court.*

*In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.”*

6. The judgment passed by this Court has attained finality and SLP (C) No.2416/2017, has been dismissed by the Supreme Court on 22.10.2021. The findings arrived at by the Courts in the previous litigation have become final upto the Apex Court. In the earlier litigation, a categoric finding has been recorded that the properties in the hand of the contesting defendants came from two different sources and they cannot be separated. The whole chunk has to be treated as non-ancestral property. The appellant is attempting to re-agitate the issues, which have been decided inter se the parties. The suit is hit by the doctrine of res judicata and has rightly been dismissed by both the Courts below. There is no infirmity in the judgments passed by both the Court, which are affirmed.

7. Finding no merit in the appeal, it is dismissed with no order as to cost.

8. Pending application is also disposed of.

**(SUVIR SEHGAL)**  
**JUDGE**

15.01.2025  
Pardeep

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|---------------------------|-----|
| Whether Speaking/Reasoned | Yes |
| Whether Reportable        | Yes |