

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

RSA No.3804 of 2018 (O&M)

Date of decision : 18.11.2025

Rahul and others

....Petitioners

Versus

Surender Singh (deceased) and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

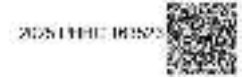
Present : Mr. Sanjay Mittal, Advocate
for the appellants.

PANKAJ JAIN, J. (ORAL)

Plaintiffs are in appeal. For convenience, the parties hereinafter are referred to as by their original position before the Court of First Instance i.e., the appellants as plaintiffs and respondents as defendants.

2. Plaintiffs filed suit seeking declaration to the effect that Sale Deed No.55 dated 16.04.1998, Sale Deed No.144 dated 17.05.1999, Sale Deed No.3130 dated 19.03.2008 executed by defendant No.1, are illegal, null and void *qua* the rights of the plaintiffs and they are entitled to possession thereof.

3. As per the plaintiffs, they along with defendant No.1 constitute a Joint Hindu Family. Defendant No.1 is *Karta* of the same. Plaintiffs and defendant No.1, are owners of 2 Kanals 7 Marlas of land situated in Khewat No.620/562 and 18 Marlas of land situated in Khewat No.621/563. The land is ancestral in nature. Plaintiffs being co-parceners have per-existing right in



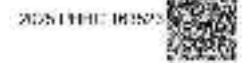
the same. Defendant No.1 sold ancestral property vide sale deeds under challenge without any legal necessity and the consent of plaintiffs. The sale deeds are without consideration as no amount was paid in front of Sub Registrar. Plaintiffs claimed that earlier they filed suit titled as '*Sangeeta and another vs. Surrender and others*' *qua* alienation of residential house. The same was decreed in their favour on 27.10.2010.

4. Defendant No.1 opted not to appear and was proceeded *ex parte*.

5. Suit was contested by defendants No.3 and 4. It was denied that plaintiffs and defendant No.1 constitute a Joint Hindu Family or that the land is ancestral. Defendants claimed to be in possession of the suit land after execution of the sale deed in their favour by defendant No.1. Defendants claimed that defendant No.1 after suffering losses in the business of Readymade Gargments, had a legal necessity to sell the land. It was further claimed that plaintiffs No.1 and 2 attained majority much before filing of the suit and thus the same was barred by time.

6. Defendant No.5 adopted the written statement filed by defendants No.3 and 4.

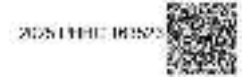
7. Trial Court relied upon admission made by DW1 Bhawani Shankar, to hold that the plaintiffs and defendant No.1 are members of Joint Hindu Family. Further reliance was placed upon testimony of DW1 and DW5 to hold that the property is ancestral in nature. Trial Court further held that defendants/purchasers having failed to prove the legal necessity or the



bona fide inquiry made by them, plaintiffs are entitled to possession of the suit property. Trial Court accordingly, decreed the suit filed by the plaintiffs.

8. The Lower Appellate Court reversed the findings recorded by the Trial Court, holding that the character of the property cannot be held to be ancestral on the basis of oral admission. Though plaintiffs proved inheritance of Hira Lal and thereafter Phool Singh father of defendant No.1, but could not link the property, in question, with the property inherited by Surender Singh from his father Phool Singh and further from Bani Singh etc. Lower Appellate Court also found that the plaintiffs failed to lead any evidence to support their plea that Surender Singh, defendant No.1 is a spendthrift person. Lower Appellate Court accordingly, dismissed the suit filed by the plaintiffs reversing the findings recorded by the Courts below.

9. Counsel for the appellants has assailed the findings recorded by the Lower Appellate Court. Mr. Mittal submits that the Lower Appellate Court erred in reversing the well reasoned findings recorded by the Court of the First Instance. It has been contended that the onus to prove legal necessity was not upon the plaintiffs but upon the defendants/purchasers. He submits that the Lower Appellate Court erred in holding that the suit was barred by Order II Rule 2 CPC merely for the reason that in the earlier suit, the present suit property was not included. He submits that the earlier suit was filed *qua* ancestral house whereas the present suit has been filed *qua* agricultural land. Both the suits were based upon different cause of actions and *qua* different subject matters. Lower Appellate Court erred in

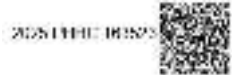


misreading the facts of the present case and in applying the principle of constructive *res judicata*.

10. I have heard counsel for the appellants and have carefully gone through records of the case.

11. Counsel for the appellants is right in contending that the Lower Appellate Court erred in recording a finding that the defendants have led ample evidence to prove legal necessity without even discussing the same. There can't be any denial to the proposition that the onus to prove legal necessity lies upon the purchasers and not upon the plaintiffs. However, in order to succeed, plaintiffs are required to prove that the suit land in the hands of defendant No.1 was ancestral or a co-parcenary property and that they had pre-existing right in the same which stands defeated by execution of sale by defendant No.1 without any legal necessity.

12. Counsel for the appellants is not in position to dispute the fact that even if mutations in favour of Hira Lal and Bani Singh are taken to be gospel truth, the same does not gets linked to the suit land. The mutations date prior to consolidation. No evidence has come on record that can link the suit property to the description of the property prior to consolidation in the hands of Hira Lal and Bani Singh. The Trial Court held the land to be ancestral relying upon oral testimony of DW1 and DW5. Trite it is that the character of the property to be ancestral cannot be ascertained merely on the basis of oral admission. Reliance can be placed upon the following



observations made by this Court in **Molar and others vs. Smt. Santo and others, 1968 PLR 510 :-**

“Excepting the admission there was no other evidence in the case to prove the ancestral nature of the land. Even assuming for the sake of argument that the admission of Shrimati Santo was not validly withdrawn or explanated away by her, it could not, without any other evidence on the record, prove the ancestral nature of the land in dispute. Admissions, as mentioned in section 31 of the Indian Evidence Act, are not conclusive proof of the matters admitted. They may, at the most, operate as estoppels.”

13. There being no documentary evidence on record to link the suit land with the land in the Hands of Hira Lal and Bani Singh, Lower Appellate Court rightly non-suited the plaintiffs reversing the findings recorded by the Court of First Instance.
14. Resultantly, finding no merit in the instant appeal, the same is ordered to be dismissed.
15. Pending application, if any, shall also stands disposed off.

November 18, 2025

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned

:

Yes/No

Whether reportable

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Yes/No