

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****213****RSA-4551-2012 (O&M)****Date of decision: 27.04.2026****Daljit Singh****...Appellant(s)****Vs.****Bulland Iqbal Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ashok Kumar Khubbar, Advocate
for the appellant.

Mr. J.R.Syal, Advocate for respondent No.1.

Mr. Rohit Singh, Advocate
for respondents No. 2 to 4.

NIDHI GUPTA, J.

Defendant No.1 is in Second Appeal against the judgment of reversal; whereby suit filed by the plaintiff/respondent No.1 for declaration and possession with consequential relief of permanent injunction although dismissed with costs by the learned Trial Court, has been partly allowed in Appeal, by the learned First Appellate Court.

2. Brief facts of the case as pleaded in the plaint are that the plaintiff and defendant No.1/ appellant are real brothers. Defendants No.2 to 4 are the legal heirs of another brother of the plaintiff, namely, Mahinder Singh. It is averred that in the year 1961, plaintiff had constructed his residential house i.e. suit property with his own funds; and suit property is owned and possessed by plaintiff being Biswadar of the village; and was occupied by the plaintiff till 1983. Thereafter, plaintiff



had shifted to Chandigarh and the suit house remained closed for some time. It was averred that on the request of Mahinder Singh/father of defendants No.2 to 4, the suit house is given to him/Mahinder Singh as licensee. Mahinder Singh had expired in 1966. After his death, defendants No. 2 to 4 had also shifted to Chandigarh and the house again remained closed. Thereafter, defendant No.1 had requested the plaintiff to give the house to him for some time. Accordingly, suit house was now given to appellant as licensee. Plaintiff had alleged in the plaint that defendant No.1 had promised that house will be vacated as and when required by the plaintiff. However, when the plaintiff requested defendant No.1 to vacate the suit house, he had refused. Accordingly, plaintiff had previously filed a Civil Suit no. 354 dated 20.07.2002 before the Civil Court at Jagadhri seeking possession of the suit property. In the said suit, defendant No.1 had put in appearance and filed written statement on 13.09.2002 denying the ownership of the plaintiff over the suit property. Defendant No.1 had also mentioned about a Release Deed No. 1054 dated 11.10.2002 which was later on procured by the defendant no.1 from Sh. Vikram Parkash, father of the parties in his favour stating therein that suit property is ancestral. It was further alleged by the plaintiff that the said Release Deed is procured by defendant No.1 as a result of fraud and misrepresentation. Plaintiff had then withdrawn the said Civil Suit with a statement to file fresh one. Consequentially, present Civil Suit No.338 dated 06.05.2004 came to be filed seeking declaration that *“the Release Deed dated 11.10.2002 executed by Sh. Vikram Parkash Singh in favour of*



*defendant No.1 is illegal, null and void; **AND** in alternate if the court comes to the conclusion that the property detailed in Release Deed is ancestral property then the parties to the suit be declared owners in equal share of the property detailed in Release Deed as per succession; **AND** suit for possession of the suit property as described in the plaint; **AND** consequential relief of permanent injunction restraining defendant No.1 from alienating the suit property in any manner.”*

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Jagadhri had dismissed the suit of the plaintiff vide judgment and decree dated 11.12.2009. However, the Civil Appeal filed by the plaintiff was partly allowed by the Additional District Judge, Yamuna Nagar at Jagadhri vide judgment and decree dated 06.08.2012, by holding the suit property to be ancestral, as follows: -

“21. Hence, the relief claimed by the plaintiff-appellant is granted to the extent that he is declared as co-owner in the suit property and the remaining relief as claimed by him is declined. The suit is partly decreed to this extent. Appeal also stands partly allowed. No order as to costs.....”

Hence, the present second appeal by the defendant No.1.

4. It is *inter alia* submitted by learned counsel for the appellant that learned First Appellate Court has decreed the suit of the plaintiff only by holding that the suit land is ancestral in nature. However, the plaintiff has failed to lead any evidence whatsoever to prove the ancestral nature of the suit property. It is contended that in the absence of any evidence on



behalf of the plaintiff to this effect, suit of the plaintiff could not have been decreed. Moreover, the Id. Lower court has presumed the property to be ancestral solely on the basis of the recital in the Release Deed. However, the same cannot be the sole basis for holding the suit property to be ancestral. Even further, case of the plaintiff has to stand on its own legs and it was upon the plaintiff to prove the alleged ancestral nature of the property.

5. Learned counsel for the appellant further submits that the lower Appellate court has also relied upon the reply filed by defendants No.2 to 4 who admitted the suit property to be ancestral. However, the lower appellate court cannot solely rely upon on the admission of defendant No.2 to 4. Whether the property is ancestral or not can be proved only by documentary evidence. In the absence of any documentary evidence, the lower appellate court has committed an error by holding the suit property to be ancestral solely on the basis of oral evidence.

6. It is further submitted by learned counsel for the appellant that the District Courts have not found any illegality in the execution of the release deed even if the release deed could not have been executed as the property was ancestral. The only remedy would have been impounding of the release deed on account of deficiency in stamp duty and the stamp duty could have been recovered. Even otherwise, Vikram Parkash Singh has expired and the release deed may be considered as a Will which has been executed by Vikram Parkash Singh in favour of appellant/defendant No.1 and has been witnessed by two attesting witnesses. It is further submitted



that the plaintiff had also claimed himself to be owner of the suit property however plaintiff has failed to lead any evidence in this behalf as well.

7. It is accordingly prayed that the present Appeal be allowed; and the judgment, and decree dated 6.8.2012 passed by the Additional District Judge, Yamuna Nagar at Jagadhri in Civil Appeal No.05 of 2010 may be set aside and the Civil suit No.338 of 6.5.04 may be dismissed with costs.

8. *Per contra*, learned counsel for respondent No.1/plaintiff vehemently opposes submissions advanced on behalf of the appellant and submits that suit of the plaintiff has been correctly decreed by the learned First Appellate Court by holding the suit land to be ancestral in nature. It is submitted that appellant in his written statement has admitted the fact that the suit property is ancestral in nature. It is contended that in view of this admission on behalf of the appellant, plaintiff was not required to lead any evidence, as admission is the best evidence. It is accordingly contended that the impugned judgment suffers from no error. He accordingly prays for dismissal of the present Appeal.

9. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find merit in the submissions advanced on behalf of learned counsel for the appellant.

10. Perusal of the record of the case shows that the plaintiff had filed Civil Suit seeking declaration that the Release Deed dated 11.10.2002 executed by Vikram Parkash Singh, father of the parties in favour of the appellant on the ground that: (a) Vikram Parkash was not of sound mind;



(b) that the suit land is ancestral; and (c) plaintiff is owner of the suit property.

11. There are concurrent findings of fact returned by learned First Appellate Court that plaintiff was unable to prove that Vikram Singh was of unsound mind. In this regard, First Appellate Court has categorically held that *“On perusal of record, I am of the opinion that the plaintiff-appellant failed to prove that the release deed was liable to be set aside due to the reason that the executor of this release deed i.e. father of was the plaintiff-appellant unable to understand the things at the time when the same had been executed in support of his claim, the plaintiff stepped into the witness box as PW2 and tendered affidavit Ex. PW2/A. However, in this sworn affidavit not even a single word was mentioned to the effect that his father was not capable of understanding the recitals in the release deed or other normal things at the time of execution of the release deed nor any other evidence in this regard had been produced by the plaintiff-appellant and in the absence of any evidence, this plea of the plaintiff-appellant could not be considered.”*

12. Plaintiff was also unable to prove that he himself has raised construction of the suit house with his own funds; and therefore he is sole owner of the suit property. The relevant findings of learned First Appellate Court in this regard are as follows: -

“19. So far as second plea as taken by the plaintiff-appellant to the effect that since he himself had raised construction of house with his own funds over the portion marked with letters ABCDEFGHI out of the property which was subject matter of



the release deed, hence he had a legal right over the same, is concerned, on perusal of evidence produced on record, I am of the opinion that the plaintiff-appellant had failed to produce any cogent and convincing evidence to this effect also. Bare oral statement to this effect has not been corroborated by any other documentary or oral evidence. He failed to bring any material on record to prove as to how many expenses were incurred by him for raising construction over the portion marked with letters ABCDEFGHI out of the suit property. He stated that he had raised construction in the year 1960-61. His statement in the court was recorded on 25.2.2008 and at that time he disclosed his age to be 68 years, meaning thereby that in the year 1960 he was only 12 years old and it does not appeal to reason that at that age he had raised construction of a house over the portion shown with letters ABCDEFGHI with his own funds. With these observations, I hold that the plaintiff-appellant failed to prove that any construction over some specific portion out of the property which was subject matter of the release deed Ex. P1 had been exclusively raised by him or he had any exclusive legal right to retain the same.”

13. On both of the above pleas/issues raised by the plaintiff, there are findings of fact against the plaintiff. The said findings have not been challenged by the plaintiff, and have therefore attained finality.

14. However, suit of the plaintiff has been partly decreed by the learned First Appellate Court only on the ground that the suit property was proved to be ancestral, as the appellant in his written statement had not specifically denied that suit land was ancestral in nature. Relevant findings



of First Appellate Court as contained in judgment dated 06.08.2012 in this regard are as follows: -

“20.....In the present case, no doubt, the plaintiff did not plead in the plaint that how the suit property was ancestral in nature but the defendants No.2 to 4 in their joint written statement categorically admitted this fact. Recital in Ex. P1, release deed, was also an admission of the fact about the ancestral nature of the suit property. Moreover, in their written statement, the contesting respondents-defendants No.1 and 5 did not specifically deny that the suit property was ancestral in nature. There was not even a vague denial to this effect and therefore, the defendants-respondents No.1 and 5 could not go out of the pleadings in the written statement. Not even this, while cross examining the plaintiff, who appeared as PW2, no suggestion had been given to the effect that the property was not ancestral in nature and father of the parties was exclusive owner of the same. In his sworn affidavit Ex. PW2/A, the plaintiff also submitted that the disputed house was in existence since the time grandfather/great grandfather of his and while cross-examining him, no suggestion to the contrary had been given by the defendants and, in my opinion, this fact amounted to admission on the part of the defendants-respondents No.1 and 5 that the suit property was ancestral in nature. Then, DW1 Tejinder Partap Singh i.e. defendant No.5 in his sworn affidavit Ex. DW5/A deposed that the suit property had come to his father from his maternal grand father (nana) but during cross examination he took a somersault and was not his self acquired property. All this goes to show that infact the suit property was ancestral in nature and the plaintiff-appellant had successfully discharged the burden of proving this fact and therefore, the findings as recorded by the learned



lower court were, certainly erroneous and are reversed. With these observations, the findings as recorded by the learned lower court to the effect that the plaintiff-appellant had failed to prove that the suit property was ancestral in nature are hereby reversed and it is held that the suit property was proved to be ancestral property of the parties.”

(Emphasis added)

15. Consequentially for the above reasoning, finding of the Trial Court that the suit land was not ancestral in nature, was reversed. It is my clear and categoric view that the above said reasoning of the First Appellate Court is palpably erroneous; and based on conjectures and surmises.

16. In this regard, it is firstly to be seen that it is the contention of the plaintiff that the suit property was ancestral. As such, the onus to prove the nature of the suit property, was upon the plaintiff. Even assuming that an outright denial was not made by the appellant in the written statement, even then, it cannot be held that the plaintiff is discharged of his onus to prove his case. Even if it is taken that specific denial was not made by the appellant even then it was incumbent upon the plaintiff to prove his own case. It is established position in law that case of the plaintiff has to stand on his own legs. It is admitted by learned counsel for the plaintiff that no documentary evidence whatsoever was produced by the plaintiff to prove the ancestral nature of the suit property. No excerpt from the revenue record was also produced to establish the ancestral nature of the suit property. Thus, merely on the basis of lack of specific denial by the appellant, the suit property cannot



be held to be ancestral. The above said reasoning of the learned First Appellate Court is on the face of it erroneous. I am supported in my view from the judgment of this Court in **Matu Ram (deceased) through LRs. v. Kartar Singh, (P&H) : Law Finder Doc Id # 122396**; wherein it is held as under:-

“A. Coparcenary - Even an admission of a party may not be enough to hold the property to be ancestral or coparcenary so as to prove the nature of the property - Court goes only by evidence on the records of the case.”

17. Reliance may also be placed upon judgment of this Court in **Gurjant Singh v. Surjit Singh, (P&H) : Law Finder Doc Id # 71747**; wherein it is held as under:-

“C. Ancestral property - Admission as to ancestral nature of property contrary to documentary evidence - Cannot be accepted - Documentary evidence will prevail.”

The relevant para of the said judgment is as under:-

“19. In my opinion, the said finding of the first Appellate Court is also erroneous. Admittedly, three Khasra numbers i.e. Khasra Nos. 267, 268 and 269 measuring 50 bighas were not the subject matter of the earlier gift deed made by the Gujjar Singh in favour of his sons and grandsons. The said land was kept by Gujjar Singh for his personal use and cultivation in the earlier family settlement in which he had equally distributed his 250 bighas of land among his three sons. In my opinion to the extent of 50 bighas of land, the gift deed executed by Gujjar Singh in favour of the plaintiffs was valid. Merely because the gift deed was executed for 72 bighas 17 biswas



of land, the same cannot be invalid regarding the whole land including the aforesaid 50 bighas. I am of the opinion that the 50 bighas of land in the hand of Gujjar Singh at the time of execution of the gift deed was not his ancestral property for two reasons. Firstly that in the year 1957, Gujjar Singh in a family settlement had given 250 bighas of land out of 300 bighas to his sons and grandsons in equal shares and kept 50 bighas of land for self use and maintenance; that was so done in a way of family partition and after the said partition, the 50 bighas land kept by him for his maintenance could not have been termed as his ancestral property. Secondly, that out of 300 bighas of land in the hand of Gujjar Singh, he received 150 bighas of land from Smt. Satoni, widow of Atra and the said land was not ancestral in his hand. In spite of evidence to the said effect available on the record, the Courts below have held the land in question as ancestral land on the ground that the plaintiff Gurjant Singh and defendant Surjit Singh in their statements have admitted that the land in question was ancestral property of Gujjar Singh. Merely, on the basis of such admission, 50 bighas of land in the hand of Gujjar Singh cannot be held to be ancestral property particularly when the documentary evidence is available contrary to such admission on the record. Therefore, the finding recorded by the Courts below that on the date of execution of the gift deed Gujjar Singh was not competent to alienate at least 50 bighas of land in favour of the plaintiffs, is not sustainable.”

18. The case of the present appellant stands on stronger footing as in the aforementioned cases, defending party therein had “admitted” ancestral nature of the suit property. However, in the present case,



appellant has not only not admitted the nature of the suit property, but has specifically denied that the suit property is ancestral. Mere lack of specific denial cannot in any manner be held to imply; and from the same it cannot, in any manner, be inferred that the suit property was ancestral.

19. Furthermore, the above said observation of the first Appellate Court that appellant/defendant no.1 in his written statement has not specifically denied the nature of the suit property as ancestral, is also misleading. Relevant averments of the appellant in paras 3, 6(b) and 10 of the reply on merits, are as follows: -

"3. That para no. 3 of the plaint is correct to the extent that the plaintiff was in service and he is residing in Chandigarh. The plaintiff mentioned a concocted story in this para. S. Bikram Parkash Singh the father of the plaintiff as well as of defendant no. 1 and 5 to 7 was exclusive owner of house in question, The plaintiff, as alleged in this para, did not give the possession of the house in question as licensee to the Mohinder Partap Singh. It is also wrong to suggest that after the death of Mohinder Partap Singh the plaintiff gave the house in question to defendant no. 1 as licensee. The entire house is in possession of defendant no. 1 since the life time of S. Bikram Parkash Singh. The electric connection of the house in question is in the name of S. Bikram Parkash Singh and telephone connection is in the name of defendant no. 1 since 1986. The plaintiff has already filed a civil suit no. 354 of 2002 titled as "Buland Iqbal Singh Vs Daljeet Singh" for possession of the house in question and along with this suit the plaintiff has also filed application u/o 39 rule 1 and 2 CPC. The injunction application has been dismissed in that suit vide order dt. 15-01-2003 and plaintiff was also directed to



makeup the deficiency of the court fees. The plaintiff preferred an appeal against order dt. 15-01-2003. This appeal has been dismissed and later on the plaintiff has withdrawn the above stated suit on 15-11-2003. On the same lines, the plaintiff has filed the present suit, however, the permission was not granted to the plaintiff to file fresh suit, hence the present suit is not maintainable.

XXX XXX XXX

6. That sub-para (b) of para no. 6 of the plaint is wrong and hence denied. S. Bikram Parkash Singh had every right to transfer the house in question in favour of defendant no. 1. S. Bikram Parkash Singh constructed the house in question from his own funds so he had every right to alienate the house in question.

XXX XXX XXX

10. That para no. 10 of the plaint is totally wrong and hence denied. The plaintiff has no concern whatsoever with the any portion of the house in question. The plaintiff is not entitled of any share in the house in question. The plaintiff can't blow hot and cold in the same breath. On one hand, the plaintiff is saying that he is owner of the house and on the other hand, the plaintiff is claiming share being legal heir of S. Bikram Paraksh Singh."

20. From a bare reading of the averments made in the written statement, it is clear that the appellant has denied the nature of the suit property as ancestral.

21. Furthermore, reliance of the first Appellate Court on the recital made by Vikram Parkash in the Release Deed is also misconceived as, as has been clarified by the defendants before the learned District



Courts that property was written to be as ancestral in the Release Deed Ex.P-1, only to evade the stamp duty. The reliance of the first Appellate Court on the alleged admission made by defendants 2 to 4 in their written statement is also misconceived as the said defendants had only stated that the suit property had devolved from the maternal grandparents. In any event, as already noted above, notwithstanding any admissions made by any party, nature of suit property cannot be proved only on the basis of said admissions or denials. Concrete documentary evidence was required to be led by the plaintiff in support of case. Learned counsel for the plaintiff does not dispute that the plaintiff did not lead any documentary evidence to prove the ancestral nature of the suit property; or proved the 3 male lineal descendants. Relevant findings of the Trial Court in this regard are in para 19 of the judgment dated 11.12.2009, which reads as under: -

“19. Now coming to the second platform i.e. the oral evidence. Qua the nature of the property, no amount of oral evidence would be helpful to the plaintiff because plaintiff has to prove by cogent evidence that the property in the hands of Vikram Partap Singh was ancestral. He has not led any evidence of such kind, therefore, in absence of that property cannot be held as an ancestral and in such circumstances, the release deed cannot be set aside mainly because it is deficient in stamp duty.”

22. Learned counsel for respondent No.1/plaintiff is unable to controvert or dispute the above said facts and findings. Consequentially, it



is proved that Vikram Parkash, father of the parties was competent to execute Release Deed.

23. Therefore, the present Appeal is **allowed**; and the impugned judgment and decree dated 06.08.2012 passed by learned Additional District Judge, Yamuna Nagar at Jagadhri is set aside; and the suit of the plaintiff stands dismissed.

24. Pending applications, if any, stand disposed of.

27.04.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

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