

(2016) 10 P&H CK 0102

High Court Of Punjab And Haryana At Chandigarh

Case No: R.S.A. No. 6139 of 2014 (O&M)

Som Nath

APPELLANT

Vs

Puran Singh

RESPONDENT

Date of Decision: Oct. 4, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (2017) 1 ICC 209 : (2016) 4 LawHerald 3472

Hon'ble Judges: Mr. Amit Rawal, J.

Bench: Single Bench

Advocate: Mr. U.K. Agnihotri, Advocate, for the Appellants; Mr. Amarjit Markan and Mr. Kanwal Goyal, Advocates, for the Respondent Nos. 1 to 3

Final Decision: Dismissed

Judgement

Amit Rawal, J.(Oral) - The appellants-plaintiffs are aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit for setting aside of the release deed dated 12.12.2003 in respect of land measuring 19 kanals 1 marla being $\frac{1}{6}$ th share in the suit property, has been dismissed by the lower Appellate Court, in essence, the judgment and decree of the trial Court decreeing the suit has been reversed.

2. Mr. U.K. Agnihotri, learned counsel appearing on behalf of the appellants-plaintiffs submits that the property at the hands of Sher Singh was ancestral. He could not have executed release deed in favour of three sons, though, he has having five sons and one daughter. Being karta, he can not squander/fritter away the property in any manner he wants, except for legal necessity. The legal necessity has not been proved which is evident from the cross-examination as he feigned ignorance with regard to the nature and character of the property, much less, execution of the release deed. All the factors were considered by the trial Court while decreeing the suit, but the lower appellate Court has committed illegality and

perversity in reversing the well-reasoned findings. The nature of the property stood admitted and therefore, in this regard, there was no need to lead the evidence, thus, urges this Court for setting aside the judgment and decree under challenge.

3. Per contra, Mr. Amarjit Markan, Advocate and Mr. Kanwal Goyal, learned counsel appearing on behalf of the respondent Nos.1 to 3, submits that it was self-acquired property of Sher Singh as the plaintiffs have failed to prove that it had fallen from third generation in lineage-plaintiff being fourth. Mere admission in the written statement cannot be rendered against the law. In support of his contentions, he relies upon the following judgments:-

1. **"Matu Ram (deceased) through LRs v. Kartar Singh and others" 2004(3) LJR 818**

2. **"Gurjant Singh Major and others v Surjit Singh and others" 2004 (3) RCR (Civil) 93**

3. "Kulwant Singh v. Harbhajan Singh and others" in RSA no.3673 of 2013 decided on 28.04.2016.

4. He further submits that as per the onus on issue Nos.1 and 2, the plaintiffs were required to lead direct and cogent evidence. Mere mentioning of the pedigree table will not clothe the property to be ancestral, thus, urges this Court for affirming the findings under challenge.

5. I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the submissions of Mr. U.K. Agnihotri, for, there was no compliance of the provisions of law as held by this Court in **"Banta Singh and others v. Phuman Singh and others" 1972 PLJ 275** and the judgments cited (supra). There has to be direct and cogent, much less, corroborative evidence like pedigree table. Mere describing of the pedigree table in the plaint will not assume the nature of the property being ancestral, in essence, in my view, the appellants-plaintiffs did not have any locus standi to challenge the release deed as Sher Singh was alive. Had any fraud been played upon him, he would have been a front-runner in challenging the same. Having not done so, I am of the view that the suit was nothing, but an act of aggrandizement.

6. For the foregoing reasons, I do not intend to differ with the findings rendered by the lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and the findings are upheld.

7. The appeal stands dismissed.