

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

SAO-96-2017 (O&M)

Date of decision : 27.03.2025

Bhupinder Singh

...Appellant

Vs.

Darshan Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Bhateja, Advocate
for the appellant.

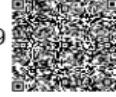
Mr. L.S. Mann, Advocate
for respondents No. 1 & 2 (iii).

ANIL KSHETARPAL, J. (Oral)

1. The plaintiffs assail the correctness of the First Appellate Court's order remitting the matter back to the trial Court for fresh decision.

2. He filed a suit for grant of decree of declaration that the suit property is joint Hindu Family, ancestral and coparcenary property, hence, the plaintiff by birth has a right in the same. Though, the defendants appeared through counsel but thereafter, they stopped appearing. The trial Court decreed the suit on 24.10.2011. Defendant No.2 filed the first appeal, which has been accepted by the First Appellate Court while recording the following observations:-

"12. Within the narrow compass of the pleading of the parties, it was the obligation of the court, before holding the plaintiffs entitled to a decree for joint possession, to adjudicate about the nature of the suit property as to whether it was ancestral coparcenary or self acquired. It is



a well settled principle of law that a property has to be presumed to be self acquired unless it is proved to be ancestral coparcenary property by the party who asserts it to be so. There is no presumption of law in favour of the ancestral nature of the suit property. When we look at the discussion rendered by the court in para No.7 of the impugned judgment, it reflects that the court simply made passing reference to the Jamabndi Ex.P1 and some documents Ex.P2 and Ex.P3, nature of which was not discussed in the judgment and another document Ex.P4 stated to be a Jamabandi Hakdarwar. Before ascertaining the nature of the property and final adjudication of its nature as ancestral coparcenary, it was obligation of the court to have sought the preparation, submission and proof of an excerpt by a competent revenue official on the basis of the entire revenue record. Without the preparation and proof of an excerpt, the nature of the suit property as ancestral could not have been proved on the record. This court is of the confirmed and considered view that the learned lower court, had fallen in error when it jumped to the conclusion about the nature of the suit property on the basis of the unrebutted evidence without bothering to discuss the evidence and find out if was sufficient to prove the ancestral nature of the property.

13. *As a result of the aforesaid discussion, this court has no hesitation to conclude that the sketchy findings returned by the learned lower court by way of impugned judgment and decree on the basis of which adjudication was rendered on the nature of the suit property has in fact led to miscarriage of justice. The nature of the property has been wrongly adjudicated without investigating into the evidence and the case of the parties. The findings returned vide impugned judgment and decree cannot be sustain in the*



eyes of law.

14. As a result, this court is left with no other option but to set aside the impugned exparte judgment and decree dated 24.10.2011."

3. Learned counsel representing the appellant submits that the defendants did not choose to contest the case and the plaintiffs in order to prove their case has produced a copy of the revenue record. Hence, the First Appellate Court has erred in reversing the judgment passed by the trial Court.

4. This Court has considered the submissions made by the learned counsel representing the parties.

5. The plaintiff claims that the property is joint Hindu Family, ancestral and coparcenary property. A heavy burden lies upon him to prove that fact. The suit filed by the plaintiff cannot be decreed only because the defendant is not contesting the same. Before passing the decree, the Court is required to satisfy about merits in the case set up by the plaintiff.

6. This Court has examined the judgment passed by the trial Court. It is evident that without deeper analysis of the evidence produced by the plaintiff, the Court proceeded to pass the judgment.

7. Keeping in view the aforesaid facts, no ground to interfere is made out.

8. Hence, the appeal is dismissed.

9. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

27.03.2025

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Whether speaking/reasoned :
Whether Reportable :

Yes No
Yes No