

PUNJAB AND HARYANA HIGH COURT

SINGLE BENCH

(Before : Deepak Gupta, J.)

OM PARKASH (NOW DECEASED) THROUGH HIS LRS AND OTHERS

Vs.

SMT. MAYA AND OTHERS

RSA-3288-2023 (O&M)

Decided on : 16-07-2026

A. Hindu Law — Ancestral/coparcenary property — No presumption — Burden of proof — There is no presumption that property owned by a person is ancestral or coparcenary property — The burden lies entirely on the party asserting such character to establish, by cogent documentary evidence, that the property devolved by inheritance through the male line from a common ancestor and retained its ancestral character throughout; mere inheritance from one's father is not sufficient in law to constitute ancestral property. [Paras 6-7, 10]

B. Evidence — Absence of revenue record establishing ancestral devolution — Effect — Where the plaintiffs produce no revenue record, mutation entries, pedigree table, old jamabandis, or other cogent record showing devolution of the property through successive male ancestors, and rely only on bald oral assertions, the foundational fact of ancestral character remains unestablished, and the burden cast upon them stands undischarged. [Para 8]

C. Suit for declaration — Possession — Plaintiff must succeed on strength of own title — A plaintiff seeking a declaration of title and possession must succeed on the strength of his own case and not on the weakness of the defendant's case — Admissions by the plaintiffs' own witnesses that they resided separately at a distance from the suit property, coupled with unproved electricity records and an unauthenticated site plan, are sufficient to negate the pleaded claim of exclusive possession. [Paras 12-14, 16]

D. Injunction — Discretionary relief — Suppression of material facts — The equitable relief of injunction is discretionary and may be declined where the plaintiff suppresses material facts or fails to approach the court with complete candour, including non-disclosure of material facts

concerning prior litigation touching the same property and rights claimed thereunder. [Para 17]

E. Second Appeal — Section 100 CPC — Scope of interference with concurrent findings — A substantial question of law arises for interference under Section 100 CPC only where concurrent findings of fact are shown to be perverse, based on no evidence, arrived at by ignoring material evidence, or by applying an incorrect legal principle — The High Court cannot re-appreciate evidence merely because another view is possible; where concurrent findings are duly supported by admissions of the plaintiffs' own witnesses and absence of documentary proof, no substantial question of law arises and the appeal is liable to be dismissed. [Paras 18-23]

Counsel for Appearing Parties

Mr. Surinder Mohan Sharma, Advocate for the Appellants; Mr. Aakash Singla, Advocate for respondents No.1 and 2.

JUDGMENT

Deepak Gupta, J. - The plaintiffs are in the present Regular Second Appeal against the concurrent judgments & decrees passed by the learned Civil Judge (Junior Division), Sonapat, and the learned Additional District Judge, Sonapat, whereby their suit for declaration with consequential relief of permanent injunction has been dismissed.

2. The plaintiffs instituted the suit claiming that the property measuring 388.4 square yards situated within the abadi of village Aterna, Tehsil and District Sonapat, was ancestral Hindu Joint Family property inherited from their father Tekan. On that premise, they sought a declaration that they alone were owners in possession of the suit property and that defendant Nos.1 and 2, who are their sisters, had no right, title or interest therein nor any authority to alienate the same in favour of defendant No.3.

3. The defendants contested the suit by pleading that the suit property was the self-acquired property of late Tekan, who had executed a registered Will dated 06.11.1992 in favour of his grand-children Kuldeep and Varsha. It was further pleaded that after the death of Kuldeep, the property devolved upon Maya and Varsha, who were competent to execute the agreement to sell in favour of defendant No.3.

4. After appreciating the oral and documentary evidence, the Trial Court dismissed the suit. The First Appellate Court, on an independent reappraisal of the entire evidence, affirmed the findings. Aggrieved thereby, the plaintiffs have filed the present Regular Second Appeal.

5. Having heard learned counsel for the appellants and having examined the record, this Court finds no merit in the appeal.

6. The entire edifice of the plaintiffs' case rests upon the assertion that the suit property is ancestral/coparcenary property. Both the Courts below have concurrently held that the plaintiffs have failed to establish this foundational fact.

7. The law is well settled that there is no presumption that property owned by a person is ancestral or coparcenary property. The burden lies entirely upon the party asserting such character to establish, by cogent documentary evidence, that the property devolved by inheritance through the male line from a common ancestor and retained its ancestral character throughout. Mere inheritance from one's father is not sufficient to constitute ancestral property in law.

8. In the present case, except for bald oral assertions, the plaintiffs did not produce any documentary evidence showing the source of acquisition of the property or its devolution through successive male ancestors. No revenue record, mutation entries, pedigree table, old jamabandis, intkhabs, khatoni ishtemal, naksha haqdarwar or any other cogent record was produced to establish that the property descended by inheritance from a common ancestor. Both the Courts below, therefore, rightly held that the plaintiffs failed to discharge the burden cast upon them.

9. The Trial Court rightly relied upon the principles noticed by this Court in **Tara Devi v. Raunak Singh, 2013 (5) RCR (Civil) 59**, that the person asserting a property to be ancestral must affirmatively establish such character by satisfactory evidence.

10. Reference may also be made to **Uttam v. Saubhag Singh, (2016) 4 SCC 68**, wherein the Supreme Court explained the concept of coparcenary property under Hindu law and reiterated that the mere fact that property belonged to the father does not automatically clothe it with the character of coparcenary property so as to confer birth rights upon descendants. The person asserting such status must establish the necessary legal foundation by acceptable evidence.

11. Therefore, the concurrent finding recorded on this aspect is based upon proper appreciation of evidence and the legal position and so, calls for no interference.

12. Even otherwise, the plaintiffs have failed to establish their possession over the suit property. PW-1 himself admitted during cross-examination that all the three brothers had constructed separate residential houses in the fields after purchasing land in the year 1962 and were residing separately. PW-2 further admitted that both defendant Nos.1 and 2 had been residing in the house situated in the village abadi for the last about 1520 years and that the plaintiffs themselves were residing at a distance of about five to seven acres from the disputed property. These admissions completely demolish the pleaded case that the plaintiffs were in exclusive possession of the suit property.

13. The electricity record produced through PW-3 was also rightly discarded by both the Courts below. The witness categorically admitted that neither the site plan nor any record connecting the electricity connection with the disputed property was available in the departmental record. Likewise, the site plan relied upon by the plaintiffs remained unproved since its author was never examined.

14. Thus, neither title nor possession stood established.

15. Besides above, the defendants consistently pleaded the existence of a registered Will dated 06.11.1992 executed by late Tekan in favour of Kuldeep and Varsha. The First Appellate Court has also noticed that the litigation relating to the said Will ultimately culminated before this Court in RSA No.3565 of 2005 decided on 30.11.2018. However,

irrespective of the defence set up by the defendants, it was incumbent upon the plaintiffs to independently establish their own title.

16. It is trite that a plaintiff seeking declaration must succeed on the strength of his own title and not on the weakness of the defence. Once the plaintiffs failed to establish either the ancestral nature of the property or their own title and possession, dismissal of the suit necessarily followed.

17. The First Appellate Court has also noticed that the plaintiffs did not disclose all material facts regarding the previous litigation concerning the Will and the rights claimed thereunder. The equitable relief of injunction is discretionary and can be denied, where the plaintiff suppresses material facts or fails to approach the Court with complete candour. The reliance placed by the Courts below upon the principles laid down in **Harinder Singh v. Joginder Singh Bitta, 2010 (7) RCR 1413**; and **Parmeshwari v. Kauri 1986 PLJ 46** cannot be faulted.

18. Most importantly, the present appeal arises from concurrent findings of fact recorded by both the Courts below after appreciation of oral and documentary evidence.

19. The scope of interference under Section 100 of the Code of Civil Procedure is extremely limited. In **Hero Vinoth (Minor) v. Seshammal, (2006) 5 SCC 545**, the Hon'ble Supreme Court held that a substantial question of law arises only when the findings recorded by the Courts below are shown to be perverse, based on no evidence, arrived at by ignoring material evidence or by applying an incorrect legal principle. Merely because another view on facts is possible does not justify interference in second appeal.

20. Similarly, in **Narayanan Rajendran and another v. Lekshmy Sarojini and others, (2009) 5 SCC 264**, the Supreme Court reiterated that the High Court cannot re-appreciate evidence in exercise of jurisdiction under Section 100 CPC merely because another conclusion is possible. Interference is permissible only where the concurrent findings suffer from perversity or are contrary to settled principles of law.

21. In the present case, learned counsel for the appellants has failed to convince this court that any material evidence has been ignored by either of the Courts below, or that the findings recorded are based upon misreading of evidence or suffer from perversity. On the contrary, the concurrent findings are fully supported by the admissions made by the plaintiffs' own witnesses and the complete absence of documentary evidence establishing the ancestral character of the suit property.

22. This Court, therefore, finds no legal infirmity in the judgments and decrees passed by the Courts below. No substantial question of law, much less one requiring determination by this Court under Section 100 of the Code of Civil Procedure, arises for consideration.

23. Accordingly, the present Regular Second Appeal is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.