

RSA No. 1435 of 2012 (O&M)
Date of decision 06.08.2015.

versus

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

- Present : Mr. Arvind Bansal, Advocate for the appellants.

K.C.PURI, J.

CM No.3866-C- 2012

CM stands allowed for the reasons mentioned therein.

Registry to carry out necessary corrections in the memo of parties.

CM No.3867-C- 2012

In view of above decision in the regular second appeal, the present misc. application stands dismissed as infructuous.

MAIN CASE.

Nasib Chand and others-appellant-plaintiffs have directed the present appeal against the judgment and decree dated 04.11.2011 passed by Shri D.S.Sheoran, learned District Judge, Kaithal vide which the appeal

against the judgment and decree dated 10.08.2009 passed by Shri Rajnish K. Sharma, learned Additional Civil Judge (Junior Division), Kaithal was dismissed.

2. Brief facts of the case are that deceased Jamna executed a Will Exhiit P1 in favour of the plaintiffs on the basis of which, they filed a suit for declaration with consequential relief of injunction with the allegations that the plaintiffs are owners in possession of the suit property as mentioned in the head note of the plaint. Earlier Jamna son of Rikhi @ Rakha was the owner of the suit property by strength of sale deed dated 24.05.1974. The 1/4th share was owned and possessed by the plaintiffs and in this manner, the plaintiffs and Jamna were joint owners in possession of the suit land. The land was never partitioned. After the death of Jamna, the land was owned and possessed by the plaintiffs in equal shares. One brother of Jamna, namely Mam Raj died issue less and as such, the entire property was inherited by Jamna. The defendants in connivance with revenue officials got the mutation sanctioned in their favour vide order dated 21.10.2003. It was further pleaded that the said mutation is wrong, illegal, null and void. Hence, the suit was filed.

3. On put to notice, defendants appeared through their advocate Shri A.K. Nirwani. Written statement was filed on behalf of defendants No.1 and 2 only and defendants No.3 and 4 adopted the written statement filed on behalf of defendants No.1 and 2.

4. Defendants No.1 and 2 in their joint written statement pleaded that they are owners in possession of the suit land and the plaintiffs have no

concern with the suit land. However, ownership of Jamna upon the suit land was admitted. The other allegations of the plaint were denied.

5. The plaintiffs filed replication reiterating the stand taken by them in the plaint and denied the averments made in the written statement.

6. From the pleadings of parties, following issues were framed :-

- 1) Whether the plaintiffs are entitled for a decree of a suit for declaration with the consequential relief of permanent injunction, as prayed for ? OPP
- 2) Whether the plaintiffs have no cause of action to file present suit ? OPD
- 3) Relief.

7. The parties have led their respective evidence on the aforesaid issues. After appraisal of the same, the trial Court vide judgment and decree dated 10.08.2009 dismissed the suit of the plaintiff with costs.

8. Feeling dissatisfied with the aforesaid judgment and decree dated 10.08.2009, the plaintiffs have directed the First Appeal, which was dismissed vide judgment and decree dated 04.11.2011 after re-appraisal of the evidence.

9. Still feeling dissatisfied with the judgment and decree dated 10.08.2009 and judgment and decree dated 04.11.2011, the present regular second appeal has been directed.

10. The appellants in paragraph No.10 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (I) Whether the plaintiff-appellants are owners in

possession of the suit land on the basis of the Will Ex.P-1.?

- (II) Whether any finding of suspicion can be delivered by the learned Courts below in spite of the fact that no question was put by the respondents to the plaintiff-appellant-Nar Singh during cross-examination about his presence or his brothers at the time of execution of the Will with the testator-Jamma ?
- (III) Whether the judgments and decrees of the learned Courts below are perverse and are based on misreading and non-reading of the evidence led by the parties which had led to miscarriage of justice ?
- (IV) Whether the finding of the Learned Courts below are based on conjectures and surmises and are not legally sustainable in the eyes of law ?

13. I have heard learned counsel for the appellant and have gone through the records of the case.

14. Learned counsel for the appellants has submitted that both the Courts below have committed grave error by dismissing the suit of the plaintiffs. It is submitted that as per pedigree table the plaintiffs are the nephews of Jamna Dass deceased. Jamna Dass deceased has executed the Will out of his free will in favour of the plaintiffs as they had been serving him during his life time. The Will has been duly proved in accordance with law. The scribe and marginal witnesses have been produced. The Courts below have discarded the Will on the ground that the same is not a registered document. The Will is not a compulsorily registrable document. Mere some cuttings in the Will regarding relationship of the plaintiff with Jamna Dass deceased is not a ground to discard the Will. Jamna Dass deceased was old person and nobody was there to care for him in village Murtzapur. So, he came in the village of plaintiffs. Plaintiffs had been

serving Jamna Dass during his life time and as such the Will has been executed by Jamna Dass in regard to the services rendered by them. Both the Courts below have wrongly discarded the Will. The other ground for rejecting the Will, that mutation has been attested after few years is not a ground to discard the Will.

15. I have carefully considered the said submission but do not find any force in that submission.

16. No doubt, the Will is not a compulsorily registrable document but the evidence has come on the record that on the same day, the deceased was a party to the sale deed. So, in these circumstances, non-registration of Will, in those circumstances, creates doubt in the case of the plaintiffs. Otherwise also, there are so many suspicious circumstances pointed out by both the Courts below regarding genuineness of the Will. The plaintiffs have been described as sons whereas by overwriting they have been mentioned as nephews. So, the concurrent finding of both the Courts below that plaintiffs have failed to prove the valid Will and that the same is surrounded by suspicious circumstances, is a question of fact which cannot be agitated in the regular second appeal in view of Section 100 of the CPC.

17. So, in view of the above discussion, I have no hesitation in holding that no question of law has arisen in the present appeal.

18. Consequently, the appeal is meritless and the same stands dismissed.

19. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

August 06 , 2015
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