

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

**RSA No.4749 of 2011 (O&M)
Date of Decision: 14.10.2015**

Surinder Kaur and others

....Appellants

Vs

Darshan Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. K.R. Dhawan, Advocate
for the appellants.

None for respondents No.1 and 2.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Defendants No.1 to 4 are in second appeal against the concurrent judgment and decrees passed by the Courts below whereby suit for declaration and recovery filed by the plaintiff-respondents No.1 and 2 has been decreed, declaring that they are owners in possession in equal shares of the property detailed in headnotes (A) to (D) of the plaint and they are entitled to recover an amount of Rs.50,000/- alongwith interest @ 9% per annum w.e.f.15.06.1999 from defendants No.1 to 3 and the the counter-claim filed by defendants No.1 to 3 has been ordered to be dismissed with costs.

[2]. The judgment and decree passed by the trial Court has

been affirmed vide order dated 23.07.2011 passed by the Additional District Judge, Faridkot in appeal filed by the defendants No.1 to 4. Whereas no appeal was filed by the defendants No.1 to 3 against the dismissal of their counter-claim by the trial Court.

[3]. Plaintiffs Darshan Singh and Manjit Singh filed suit for declaration and recovery to the effect that they are owners in possession in equal shares of the property mentioned in headnotes (A) to (D) of the plaint and for recovery of an amount of Rs.50,000/- which was paid by the plaintiffs to defendant No.1-Smt. Surinder Kaur as earnest amount alongwith interest @ 18% per annum from 15.06.1999 till actual realisation of the amount.

[4]. Jangir Singh was the father of plaintiffs. Defendant No.1 is the daughter-in-law and defendants No.2 to 4 are the grand daughters of pre-deceased son of Jangir Singh namely Bhag Singh. Defendants No.5 to 7 are the daughters of Jangir Singh and defendant No.8 is the wife.

[5]. Jangir Singh died on 28.03.1998. He executed a registered Will dated 21.10.1991 in respect of his movable and immovable properties in favour of plaintiffs and by virtue of that Will, plaintiffs became owners in possession of the properties in equal shares. Third son namely Bhag Singh pre-deceased Jangir Singh was left as he died on 14.11.1989. He and his family never lived at Kotkapura.

[6]. In the month of June 1997, defendant No.1 i.e. widow of Bhag Singh alongwith her father Harnam Singh retired

Commissioner, resident of Gurdawara Singh Sabha Road, Zira came to Kotkapura alongwith other persons and approached Mehla Mandal and Shiv Sena and after bringing them to the house of the plaintiffs forcibly occupied some portion of the house and threatened the plaintiffs to vacate the house and got the agreement dated 14.06.1999 executed with defendant No.1 and to part with money of Rs.50,000/- as earnest amount. The agreement is claimed to be illegal, arbitrary and against law. As defendant No.1 had no right or title in the property in question and the agreement does not create any right in favour of defendant No.1. Defendant No.3 alongwith father of defendant No.1 got summoned the plaintiffs to the police station and threatened them of dire consequences in case other properties of Jangir Singh was not left.

With the aforesaid background the civil suit came to be filed.

[7]. On being issued notice, defendants contested the suit by filing written statement.

[8]. It has been claimed that Bhag Singh was the eldest son of Jangir Singh who died on 14.11.1989 and his notional share in the coparcenary joint Hindu family property i.e. suit land had devolved upon his widow/defendant No.1 and three daughters defendants No.2 to 4. The Will dated 21.10.1991 executed by Jangir Singh in favour of plaintiffs is claimed to be forged, fabricated. Infact no Will was ever executed and Jangir Singh was not competent to bequeath

his property which was ancestral coparcenary joint Hindu family property.

[9]. On demise of Bhag Singh his interest in the suit property had devolved upon his heirs i.e. defendants No.1 to 4. Infact Jangir Singh during his lifetime made an oral family settlement in the year 1971 with the intervention of respectables and relatives and had given 10 *Kanals* 8 *Marlas* being 1/9th share of 93 *Kanals* 11 *Marlas* of land to Bhag Singh i.e. pre-deceased son of Jangir Singh and also delivered the possession of the one *Ahata* in which a Saw Mill was installed adjoining Inder Singh having in it two shops, one *baithak* and a courtyard as mentioned in the headnote (D) of the plaint. This property was given to Bhag Singh. Other properties were given to other sons namely Darshan Singh and Manjit Singh (plaintiffs). Possession of property was also delivered to Bhag Singh. The oral family settlement was reduced into writing in the form of memorandum on 27.04.1971 which was duly signed by Jangir Singh in Punjabi and his three sons namely Bhag Singh, Darshan Singh and Manjit Singh and the same was witnessed by Bachittar Singh Ex.-Municipal Commissioner, Hazoor Singh, Ajmer Singh and Gurdial Singh.

[10]. Out of suit land 200 square yards of land was agreed to be purchased by the plaintiffs from defendant No.1 Surinder Kaur for an amount of Rs.3,00,000/- vide agreement to sell dated 14.06.1999. An amount of Rs.50,000/- was paid to the defendant No.1 as earnest

amount and remaining amount was to be paid at the time of registration of sale deed. Possession was taken over by the vendees and the sale deed was to be executed and registered on or before 30.11.1999 as per terms and conditions of the agreement to sell.

[11]. Bhag Singh was the permanent resident of Kotkapura, who was BE and was employed at Pune. Later on he started his own business at Faridabad, but he used to come to Kotkapura of his own. His family belongings remained in the property as mentioned in the headnote (D) of the plaint. Jangir Singh used to live with the family of Bhag Singh during his stay at Kotkapura. Jangir Singh used to visit Faridabad in order to see his son and grandchildren and used to stay with them for a long time.

[12]. Plaintiffs committed breach of the terms and conditions of agreement to sell. Defendant No.1 always remained ready and willing to perform her part of obligation arising out agreement to sell dated 14.06.1999. Defendant No.1 was constrained to cancel the agreement to sell and forfeited the amount of Rs.50,000/-.

[13]. Defendants No.1 to 3 also filed counter-claim to the effect that defendants No.1 to 4 are the owners of the properties mentioned in the headnote (A) and (B) of the written statement on the basis of memorandum dated 27.04.1971 duly executed by Jangir Singh as *Karta* of the family and his sons namely Bhag Singh, Darshan Singh and Manjit Singh as coparceners thereof. Defendants No.1 to 3 also sought declaration that Will dated 21.10.1991

executed by Jangir Singh in favour of plaintiffs and consequent mutation No.2789 sanctioned on 25.01.2000 are illegal, null and void and are in violation of family settlement. They also sought declaration to the effect that defendants No.1 to 4 are owners of 1/6th share of land measuring 63 *Kanals* 12 *Marlas* of the land.

[14]. Defendants No.5 to 8 also contested the suit by filing written statement to the effect that property shown in headnote (A) was the self-acquired property of Jangir Singh. He purchased the property as shown in headnote (B) through registered sale deed dated 16.06.1969. The property shown in headnote (C) was purchased by Jangir Singh vide registered sale deed dated 01.05.1951 and similarly property mentioned in headnote (D) was purchased by him in auction vide sale certificate dated 30.04.1963. In this way whole property was claimed to be self-acquired property of Jangir Singh. Their claim is that in case Will is to be ignored then the answering defendants are entitled to their 4/7th share.

[15]. After necessary pleadings following issues were framed by the trial Court:-

- “1. *Whether the plaintiffs are entitled to declaration as prayed for? OPP*
2. *Whether the plaintiff is entitled to recovery of Rs.50,000/- with interest at the rate of 18% from 15.06.1999 till the recovery? OPP*
3. *Whether the suit property was the self acquired property of Jangir Singh son of Bhag Singh resident of Kotkapura, if so its effect? OPP*

4. *Whether Jangir Singh son of Bhag Singh resident of Kotkapura bequeathed his entire property movable and immovable in favour of plaintiffs through a registered Will dated 21.10.1991? OPP*
5. *Whether the contract dated 14.06.1999 is result of coercion and improper pressure, if so its effect? OPP*
6. *Whether the defendants No.1 to 4 are owners of the property mentioned in counter claim on the basis of family settlement which was recorded in a memorandum dated 27.04.1971? OPD*
7. *Whether the suit property mentioned in the heading of the counter claim was the ancestral, coparcenary and joint Hindu family property of Jangir Singh and his three sons? OPD*
8. *Relief."*

[16]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[17]. Trial Court decreed the suit of the plaintiffs thereby declaring that plaintiffs are owners in possession in equal shares of the property shown in headnotes (A) to (D) and they are entitled to recover an amount of Rs.50,000/- alongwith interest @ 9% per annum from 15.06.1999 from the defendants No.1 to 3. Accordingly, counter-claim filed by defendants No.1 to 3 was dismissed with costs.

[18]. Defendants No.1 to 4 preferred appeal against the judgment and decree dated 03.09.2008 passed by the trial Court.

However, no appeal was filed against the dismissal of counter-claim.

[19]. Additional District Judge, Faridkot vide judgment and decree dated 23.07.2011 dismissed the appeal thereby maintaining judgment and decree dated 03.09.2008 passed by the trial Court. Hence the present appeal by the defendant-appellants.

[20]. I have heard learned counsel for the both the parties and have also perused the record with their assistance.

[21]. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I**, framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[22]. Adhering to the aforesaid requirement following law points have been framed in para 6 of the grounds of appeal:-

“(i) *Whether Jangir Singh was competent to execute the alleged will dated 21.10.1991, when the suit property was already stood divided in the year*

1971 in the family division and he was not the owner of the property.

- (ii) Whether Jangir Singh was having any right to execute the alleged will in view of the fact that the suit property was ancestral property in the hands of Jangir Singh.*
- (iii) Whether the will dated 21.10.91 is shrouded by suspicious circumstances as Jangir Singh has not mention any thing regarding the death of his son Bhag Singh and no reason has been given to disinherit his son Bhag Singh and his family i.e. appellants.*
- (iv) Whether the registration is required where the partition took place by way of family arrangement and the arrangement has been acted upon.”*

[23]. Learned counsel for the appellants has argued that Will dated 21.10.1991 is shrouded with suspicious circumstances as Jangir Singh has not shown anything in respect of death of his son Bhag Singh and no reasons have been given to disinherit him and his family from the suit land. According to learned counsel, Will dated 21.10.1991 is shown to have been executed in favour of Dashan Singh and Manjit Singh. There is no mention of Bhag Singh whether he was also son of Jangir Singh or not?

[24]. Learned counsel for the plaintiff-respondents reiterated the story as contained in the plaint. Manjit Singh has been examined as PW-1 and also deposed on the basis of his affidavit Ex.PW1/A wherein he has reiterated the entire version of the plaint. PW-2

Hardial Singh also deposed on the basis of his affidavit Ex.PW2/A, wherein he has deposed in the context of Will that a registered Will was executed by Jangir Singh in favour of Darshan Singh and Manjit Singh. He was one of the attesting witness to the Will. Kewal Krishan, Advocate scribed the Will at Faridkot at the instance of Jangir Singh. Contents of the Will were read over to the Jangir Singh, who put his signatures thereof. Gurdikshat Singh Advocate also signed the Will as second attesting witness. The Will was duly registered before the Sub-Registrar and the same has been duly proved on record as Ex.P1. Kewal Krishan, Advocate scribe of the Will also appeared as PW-3 and also deposed on the basis of his affidavit Ex.PW3/A with reference to entry of the Will in his register as Ex.P-2.

[25]. Execution of Will stood proved on record with reference to the evidence of scribe and attesting witness. Bhag Singh was the eldest son of Jangir Singh who died on 14.11.1989, The defendants No.1 to 3 claimed that the property is ancestral coparcenary joint Hindu family property. Bhag Singh acquired birth right in the property in question and after his death his share devolved upon his family and, therefore, Will in question is proved to be forged and fabricated and is not binding upon ancestral coparcenary joint Hindu family share of Bhag Singh in favour of defendants on his demise. They asserted oral family settlement which took place in the year 1971 wherein 10 *Kanals* 8 *Marlas* i.e. 1/9th share of 93 *Kanals* 11 *Marlas* of land was given to Bhag Singh pre-deceased son of Jangir Singh. He

was given *Ahata* in which a Saw Mill was installed adjoining Inder Singh having in it two shops, one baithak and a courtyard as mentioned in the headnote (D) of the plaint. The oral family settlement was reduced into writing in the form of memorandum dated 27.04.1971 which was duly signed by Jangir Singh in Punjabi and his three sons namely Bhag Singh, Darshan Singh and Manjit Singh and was witnessed by Bachittar Singh Ex-Municipal Commissioner, Hazoor Singh, Ajmer Singh and Gurdial Singh.

[26]. Plaintiffs sought to purchase 200 square yards of land from defendant No.1 over a total sale consideration of Rs.3,00,000/- vide agreement dated 14.06.1999. Earnest amount to the tune of Rs.50,000/- was paid to defendant No.1 and target date for registration of sale deed was fixed on or before 30.11.1999. Breach of terms and conditions of agreement entailed in cancellation of agreement and forfeiture of amount of Rs.50,000/- by defendant No.1. The mutation sanctioned on the basis of Will dated 21.10.1991 is also claimed to be illegal, inoperative and null and void qua the rights of defendants No.1 to 4.

[27]. Defendants got examined Harpal Singh as DW-1, who deposed on the basis of his affidavit Ex.DW1/A deposing that his father Ajmer Singh died in the year 1986 and he used to sign in Punjabi. He deposed in the context of signature of Ajmer Singh on memorandum dated 27.04.1971 as a witness. He also proved document Ex.DX. Kashmir Singh has been examined as DW-2, who

has deposed in the context of document Ex.D3 to Ex.D21 which have been issued by Municipal Council, Kotkapura, bearing signatures of Executive Officer, Municipal Committee, Kotkapura. DW-2 is working under him and he identified his signature on the aforesaid document. Defendant No.1 appeared herself as DW-3 and deposed on the basis of her affidavit Ex.DW3/A. She has reiterated the stand taken in the written statement and in the counter-claim. Anil Kumar Gupta, Handwriting and Fingerprint Expert has been examined as DW-4 and he also deposed on the basis of his affidavit Ex.DW4/A and proved the report Ex.DW4/1 and other evidence of negatives of the photographs and photographic charts. He gave his report that disputed signatures on mark XI and standard signatures of Manjit Singh Mark S to S-8 are similar in their writing characteristics and have been written by one and the same person. DW-5 Rajinder Kumar, Document Writer deposed on the basis of his affidavit Ex.DW5/A that Mulakh Raj Numberdar was his father, who has died. He used to see him writing and signing on the documents. The original writing on the family partition was in the handwriting of his father and he also proved original writing as Ex.DX/1.

[28]. Defendants No.5 to 8 argued that the property is the self acquired property of Jangir Singh on the basis of registered sale deeds. Sale deed dated 16.06.1969 was in the context of property mentioned in headnote (B). Sale deed dated 01.05.1951 was in the context of property mentioned in headnote (C) and sale certificate dated 30.04.1963 was in the context of property mentioned in

headnote (D). They also stake their claim in case properties are found to be self acquired property of Jangir Singh.

[29]. Both the Courts below have not accepted the memorandum of partition dated 27.04.1971, i.e. writing of partition has not been registered. Property was self-acquired property. So far as property mentioned in headnote (A) is concerned the same fell to the share of Jangir Singh by virtue of Will dated 23.10.1964 executed in his favour by Bagga Singh and this fact has been proved in mutation Ex.PX. Property under headnote (B) was purchased by Jangir Singh from one Raj Kumari Maheepinder Kaur vide registered sale deed Ex.P3 on 16.06.1969. The property under headnote (C) was purchased by Jangir Singh vide sale deed Ex.P-5 dated 01.05.1951 from Birjinder Singh. The property shown in headnote (D) was purchased by him vide sale certificate Ex.P-4 dated 30.04.1963. All the documents are more than 30 years old and are to be believed *per se* in evidence. These documents have not been doubted, nor any evidence was brought to the contrary. Accordingly, both the Courts below held the property to be self-acquired by the Jangir Singh.

[30]. Execution of writing dated 27.04.1971 Ex.DX/1 on record showed that partition was effected through this document. It is not a memorandum depicting that by virtue of this document prior partition was acknowledged. The wording of this document in itself shows that partition is being effected through this document itself. The rights of

the parties are to flow from this document, nor from the writing if any executing prior thereto. In view of aforesaid such type of writing, confer right for the first time in respect of property, valuing more than Rs.100/-, requires compulsory registration in terms of Section 17(1) (b) of Registration Act.

[31]. Execution of Will has been proved with reference to evidence of scribe and attesting witnesses. No evidence to the contrary has been proved on record.

[32]. Learned counsel for the plaintiffs has submitted that no reason has been shown in the Will dated 21.10.1991 in respect of disinheritance of third son namely Bhag Singh and his family. Secondly even before execution of the the Will, Jangir Singh executed two affidavits before Municipal Committee in respect of house tax received from Bhag Singh. Even in one of the affidavit Manjit Singh identified Bhag Singh and after the death of Jangir Singh he entered into agreement to sell with defendant No.1 and paid an amount of Rs.50,000/- as earnest amount. All these factors go in a long way to prove that there was a family settlement in the year 1971 acknowledging share of Bhag Singh and his family in the suit property.

[33]. Vide civil miscellaneous No.2286-C of 2012, documents Ex.D-1 i.e. memorandum of family partition and Ex.P-1 Will dated 21.10.1991 affidavit dated 08.10.1997 i.e. Ex.D-8 and affidavit Ex.D-13 executed by Jangir Singh in which Manjit Singh also signed

have been filed by the appellants. This affidavit carries the recital that property No.B-IV/402A is in the ownership of Bhag Singh. The evidence led by the defendants is not sufficient to disbelieve the factum of Will.

[34]. The contention of the learned counsel for the appellants that Will is shrouded with suspicious circumstances on account of exclusion of natural heirs does not survive any longer. Exclusion of natural heirs by itself does not create any suspicious ground for rejection in view of **Mahesh Kumar (dead) by LRs vs. Vinod Kumar and others, 2012(2) RCR (Civil) 493.**

[35]. In the light of aforesaid observations question No.1 as formulated in grounds of appeal does not arise at all as family settlement is not proved to have been executed as a memo of settlement for want of registration. Question No.2 as framed is discarded on the ground that the property in question is proved to be self-acquired property by way of overwhelming evidence on record. The property never remained as ancestral property, rather it was purchased through registered documents from time to time. The question No.3 framed in respect of Will having shrouded with suspicious circumstances does not stand to test as mere exclusion of Bhag Singh and his disinheritance in the Will in itself is not sufficient ground to discard the Will as discussed in the earlier part of the judgment. Since family settlement has already been discarded on the basis of evidence, question No.4 also does not hold the field.

[36]. Perusal of record reveals that entries in the record maintained by the Municipal Committee/Council are not the documents of title. They can only be read for collateral purposes and not for advancing any title in favour of either of the parties. Secondly even if agreement to sell was executed in favour of plaintiffs and defendant No.1 has derived some benefit of usurping an amount of Rs.50,000/- as earnest amount that *ipso facto* does not crystallises as a title in favour of defendant No.1 by any stretch of imagination. These documents does not create and estoppel against the plaintiffs, who have led evidence to show that property in the hands of Jangir Singh was self-acquired property and he voluntarily executed Will in favour of his two sons namely Darshan Singh and Manjit Singh. Execution of documents have been proved with reference to evidence on record.

[37]. Learned counsel for the appellants on the point of estoppel cites **Kale and others vs. Deputy Director of Consolidation and others, 1976 AIR (SC) 807.** As discussed above on the point of estoppel in view of record of Municipal Council and agreement to sell having been entered into between the parties in respect of 200 square yards of land which was agreed to be executed by defendant No.1 in favour of plaintiffs. So, the cited law is not applicable to the facts of the present case.

[38]. Defendants themselves set up a counter-claim in the written statement. The counter-claim was dismissed by the trial Court and

no appeal was filed against that judgment and decree passed by the trial Court. The said judgment and decree dismissing counter-claim has become final against defendants No.1 to 3 and they cannot enlarge the scope of the present appeal so as to include dismissal of counter-claim which was required to be assailed before the lower appellate Court by way of independent appeal.

[39]. Taking all the facts and circumstances in consideration, this Court finds that no case is made out to interfere in concurrent findings recorded by the Courts below on the basis of Will and family settlement allegedly executed between the parties. Hence this appeal is totally bereft of merits and the same is accordingly dismissed.

October 14, 2015

Atik

(RAJ MOHAN SINGH)
JUDGE