

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.339 of 2012(O&M)
Date of decision: 10.12.2015

Gurdeep Kaur

... Appellant

Versus

Karam Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. M.K. Garg, Advocate for the appellant.

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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 09.02.2010. As even an appeal preferred against the said decree failed and was dismissed vide judgment dated 06.08.2011, plaintiff is before this court vide the present regular second appeal.

Plaintiff prayed for a declaration that she was owner to the extent of 1/2 share in the estate of late Dalip Kaur widow of Gurbax Singh in a land measuring 255 kanals 12 marlas, situated at village Jhatra, Tehsil Zira, as also 1/8th share out of a land measuring 58 kanals 13 marlas, situated at village Talwandi Jhallelkhan, Tehsil Zira, District Feorzepur. The case set out by the plaintiff was that Dalip Kaur happened to be the widow of Gurbax Singh, who was a real brother of

Gurdial Singh i.e. father of the plaintiff. The other heirs of Dalip Kaur, except defendant No.1 Surjeet Kaur daughter of Gurdial Singh, had since pre-deceased her, therefore, only the plaintiff and defendant No.1 were entitled to succeed to her estate. Resultantly, mutation No.2224, qua the land situated at village Jhatra and mutation No.4731, qua the land situated at village Talwandi Jhallelkhan, sanctioned in favour of defendants No.2 to 6, pursuant to a Will dated 15.06.1988, were liable to be set aside.

In defence, defendants No.2 to 6 pleaded, inter alia, that the suit filed by the plaintiff was barred by provisions of Order 23 Rule 1 of the Code of Civil Procedure. It was denied that Pritam Singh and Bakshish Singh, who happened to be the brothers of plaintiff and defendant No.1 and sons of Gurdial Singh, had pre-deceased Dalip Kaur. In fact, Dalip Kaur had inherited the suit property from her husband Gurbax Singh. And she used to reside at village Jhatra along with the defendants, and it was purely on account of love and affection for defendants No.2 to 6, she executed a Will dated 15.06.1988, in their favour. Thus, the suit property was rightly mutated in their favour.

On a consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that the plaintiff failed to prove that the Will in question, dated 15.06.1988, was a forged and fabricated document. In fact,

defendant examined the scribe of the Will i.e. Ajaib Singh (DW3), who testified the due and valid execution of the Will by Dalip Kaur in favour of defendants No.2 to 6. Likewise, Piara Singh (DW2), who happened to be one of the attesting witness of the Will, fully corroborated the case of the defendants. Evidence on record showed that the Will was duly thumb marked by late Dalip Kaur in the presence of the witnesses, who also signed the same in the presence of the testator. That being so, it was concluded that the execution of the Will, dated 15.06.1988, was duly proved and, therefore, the mutation (Ex.P4) was rightly sanctioned in favour of the defendants. Not just that, plaintiff had even earlier filed a similar suit against the defendants through her duly constituted attorney, namely, Jeet Singh, who happened to be her husband, but the said suit was dismissed as withdrawn on 12.04.1996, pursuant to the statement of Jeet Singh. Concededly, plaintiff never moved any application for restoration of the previous suit. That being so, the present suit filed by the plaintiff was clearly barred under Order 23 Rule 1(4) of the Code of Civil Procedure.

Learned counsel for the appellant could not point out as to how the conclusions that had concurrently been recorded by both the courts were either contrary to the position on record or suffered from any material illegality.

That being so, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No

question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly dismissed.

December 10, 2015
Rajan

(Arun Palli)
Judge